

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MUSTAFA ABDULLAH,)	
)	
Plaintiff,)	
)	
v.)	No. 4:14-CV-1436-CDP
)	
COUNTY OF SAINT LOUIS, MISSOURI,)	
et al.,)	
)	
Defendants.)	

PRELIMINARY INJUNCTION HEARING

BEFORE THE HONORABLE CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

SEPTEMBER 29, 2014

APPEARANCES:

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INDEX

Plaintiff Witnesses:

JOHANNA HOLBROOK

Direct Examination by Mr. Clancy	Page 8
Cross-examination by Mr. Shuman	Page 23
Cross-examination by Mr. Isaacson	Page 29

GRANT DOTY

Direct Examination by Mr. Rehn	Page 32
Cross-examination by Mr. Shuman	Page 46
Cross-examination by Mr. Isaacson	Page 52

DERAY MCKESSON

Direct Examination by Mr. Davis-Denny	Page 58
Cross-examination by Mr. Shuman	Page 80
Cross-examination by Mr. Isaacson	Page 87
Redirect Examination by Mr. Davis-Denny	Page 95

MUSTAFA ABDULLAH

Direct Examination by Mr. Davis-Denny	Page 99
Cross-examination by Mr. Shuman	Page 113
Cross-examination by Mr. Isaacson	Page 118
Redirect Examination by Mr. Davis-Denny	Page 123

JOEL REINSTEIN

Direct Examination by Ms. Degtyareva	Page 126
Cross-examination by Mr. Shuman	Page 135
Cross-examination by Mr. Isaacson	Page 136

Defense Witness out of order:

JON BELMAR

Direct Examination by Mr. Shuman	Page 141
Cross-examination by Ms. Degtyareva	Page 159
Cross-examination by Mr. Isaacson	Page 174
Redirect Examination by Mr. Shuman	Page 176

Plaintiff Witnesses continued:

JOHNETTA ELZIE

Direct Examination by Mr. Davis-Denny	Page 178
Cross-examination by Mr. Shuman	Page 185

JAMES DONALD GINGER JR., PH.D.

Direct Examination by Ms. Degtyareva	Page 188
Cross-examination by Mr. Isaacson	Page 203

Defense Witnesses continued:

JEFF BADER

Direct Examination by Mr. Shuman	Page 221
Cross-examination by Mr. Rehn	Page 231
Redirect Examination by Mr. Shuman	Page 237

DANIEL ERIC CALDWELL

Direct Examination by Mr. Isaacson	Page 238
Cross-examination by Mr. Clancy	Page 262

J. BRET JOHNSON

Direct Examination by Mr. Isaacson	Page 267
Cross-examination by Mr. Davis-Denny	Page 280
Cross-examination by Mr. Shuman	Page 291
Arguments	Page 295

1 (Proceedings began at 9:07 a.m.)

2 THE COURT: All right. Good morning. We're here in
3 the case of Mustafa Abdullah, et al., versus Saint Louis
4 County, Missouri, et al., and actually, is there another
5 Plaintiff?

6 MR. ROTHERT: No.

7 THE COURT: So St. Louis County just handed up this
8 expected list, and I assumed.

9 THE CLERK: No. I printed it out.

10 THE COURT: Oh, no. We -- you printed it out for me.
11 Okay. Yeah. No. I was just reading from the caption. So
12 there's only one Plaintiff.

13 MR. ROTHERT: That's correct.

14 THE COURT: When I started reading this document, I
15 thought, oh, I missed somebody. This is Case No.
16 4:14-CV-1436, and we are here for a hearing on the motion for
17 preliminary injunction, and so I would ask the attorneys to
18 please state your names for the record and tell me who all is
19 here in terms of lawyers. And so for the Plaintiff?

20 MR. ROTHERT: Your Honor, Anthony Rothert for the
21 Plaintiffs. Doing the talking today will be some attorneys
22 from Munger Tolles & Olson.

23 MR. DAVIS-DENNY: Good morning, Your Honor. Grant
24 Davis-Denny from Munger, Tolles & Olson on behalf of the
25 Plaintiff.

1 THE COURT: Okay. Speak up because it's very hard to
2 hear in this courtroom. All right. Thank you.

3 And who else? Anybody else speaking?

4 MS. DEGTYAREVA: Good morning. Victoria Degtyareva
5 from Munger Tolles & Olson on behalf of the Plaintiff.

6 THE COURT: All right. Thank you.

7 MR. REHN: Yes, Your Honor. Nathan Rehn from Munger
8 Tolles & Olson on behalf of the Plaintiff.

9 THE COURT: All right. Mr. Rehn.

10 MR. CLANCY: Thomas Clancy from Munger Tolles & Olson
11 on behalf of the Plaintiff. Good morning, Your Honor.

12 THE COURT: All right. Good morning.

13 And then for the Defendant St. Louis County.

14 MR. SHUMAN: Mike Shuman for the County.

15 THE COURT: All right. And for the Defendant Ronald
16 Replogle.

17 MR. ISAACSON: Robert Isaacson, Your Honor.

18 THE COURT: Am I pronouncing your client's name
19 correctly?

20 MR. ISAACSON: Replogle.

21 THE COURT: Replogle. Okay. All right. So before
22 we begin, there are some preliminary matters to take up. The
23 first one is I want to remind everyone to turn off their cell
24 phones and that any kind of recording or photographing is not
25 allowed in the courtroom.

1 The second one is there has been a motion filed to
2 exclude witnesses, and I don't know technically whether that
3 applies, but if anybody asks for it, I always grant it, so all
4 witnesses other than parties are excluded from the courtroom.
5 Each of the Defendants, of course, is allowed to have one
6 party representative here. I see Mr. Abdullah sitting at
7 counsel table. So anyone else who is a witness needs to go
8 out to the witness room.

9 MR. SHUMAN: Judge, Chief Belmar is going to be a
10 witness, he's going to testify, but will he be included within
11 the exclusion order?

12 THE COURT: Well, you -- you're entitled to have
13 one -- you know, the County is the Defendant, and so it can
14 have one client representative, whoever. Whether you want
15 that to be Chief Belmar or someone else, it doesn't matter to
16 me.

17 MR. SHUMAN: I think I'd like him to sit in.

18 THE COURT: Yeah, that's fine. So he can stay, and
19 then the other witnesses need to be excluded, and the witness
20 rooms are outside.

21 THE CLERK: He's not here. He's out in the witness
22 room.

23 THE COURT: Oh, he's out in the witness room. Well,
24 you can go get him. We'll -- we won't -- promise not to do
25 anything until you get back.

1 All right. Then the next issue is there was a motion
2 to amend the witness list that was filed, I guess, yesterday
3 by the Plaintiff. That's fine. I'm not going to -- I think
4 you can call that witness. We'll -- if the other side wishes
5 to object when you call them, you may do so. So that motion
6 is also granted.

7 And then the Plaintiffs filed a motion for relief
8 asking me to take judicial notice of a bunch of newspaper
9 articles, and I don't -- I'm not going to take judicial notice
10 of everything that was printed in those articles. There's a
11 lot of stuff in there that may or may not be true. There may
12 be some facts you want me to take judicial notice of, and if
13 you want to tell me what those are, I'm happy to do that, but
14 I'm going to deny the motion because it asks generally for me
15 to take judicial notice of everything in the newspaper
16 articles. If you want me to take, you know, judicial notice
17 of the fact that there have been newspaper articles, that's
18 fine, and certainly, you know, the stuff that's been going on
19 is a matter of news, and as I said at the temporary
20 restraining order hearing, I watch the news the same as
21 everyone else, but I'm not -- you know, I can't say that
22 everything in those articles is beyond dispute.

23 So with that, I think we're ready to proceed. Do you
24 all want to make any opening statements, or do you want to
25 just proceed with your witnesses?

1 MR. DAVIS-DENNY: We're fine proceeding, Your
2 Honor --

3 THE COURT: Okay.

4 MR. DAVIS-DENNY: -- unless you would like to address
5 anything with us before we get started that was covered in our
6 briefs.

7 MR. ISAACSON: We're ready to proceed.

8 THE COURT: Yeah. No. I'm ready to go ahead, so you
9 can call your first witness.

10 MR. CLANCY: Your Honor, Plaintiffs would like to
11 call Johanna Holbrook.

12 THE COURT: All right. Is she outside?

13 MR. CLANCY: She is.

14 THE COURT: Okay. And can you remind me of what your
15 name is?

16 MR. CLANCY: Thomas Clancy, Your Honor.

17 THE COURT: Okay. All right. Ma'am, if you would
18 step up here to the clerk to be sworn. Just come all the way
19 up, and she'll show you where to go.

20 (Witness sworn.)

21 MR. CLANCY: Your Honor, may I proceed?

22 THE COURT: You may.

23 **JOHANNA HOLBROOK,**

24 HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
25 FOLLOWS:

DIRECT EXAMINATION

BY MR. CLANCY:

Q Good morning, Ms. Holbrook.

A Good morning. How are you?

Q Good. Ms. Holbrook, where do you live currently?

A I live in Orlando, Florida.

Q And how long have you lived in Florida?

A Eight years.

Q And where did you live before you moved to Florida?

A I lived in the Ferguson-Florissant area, Florissant to be specific.

Q Is it okay if I refer to it as the Ferguson-Florissant area?

A You definitely can. That's how the school system is called.

Q And how long did you live there?

A I lived there for 33 years.

Q Were you born in the Ferguson-Florissant area?

A Yes.

Q Ms. Holbrook, what's your current occupation?

A I'm a housewife currently.

Q And when you were residing in the Ferguson-Florissant area, what was your occupation?

A I worked in St. Louis City/St. Louis County courts as a crisis intervention specialist.

1 Q And now that you live in Orlando, do you still come back
2 to the Ferguson-Florissant area?

3 A Oh, yeah.

4 Q About how often would you say?

5 A At least maybe, I'd say, four times a year.

6 Q For about how long?

7 A Anywhere from maybe five days to two weeks at a time.

8 Q And why do you come back to the Ferguson-Florissant area?

9 A It's just my foundation. It's where all my family is.
10 It's where all my friends are.

11 Q Which members of your family live here?

12 A Everybody -- my mother, my father, my children, my
13 daughters who are 21 and 24, all my in-laws, all my friends.

14 Q Thank you. Did you attend any of the protests in
15 Ferguson related to the shooting of Michael Brown?

16 A I did.

17 Q If you can recall, what is the first time you attended a
18 protest related to the shootings?

19 A It was Sunday, I think the 17th of August.

20 Q And where did you go?

21 A I went out to Ferguson Avenue and West Florissant, by the
22 Ferguson Market.

23 Q And why did you go there?

24 A Just to experience the atmosphere. I kind of just wanted
25 to feel it, see what was going on.

1 Q Did you go there to protest?

2 A No.

3 Q No. So what was your goal in going there?

4 A My goal was just to go out there and, I guess, document
5 it for my own personal preference. I have my own personal
6 experiences, and I just wanted to be a part of the situation.

7 Q And around what time of day did you go on that Sunday?

8 A It was early in the evening, maybe 6:00, 5:00 or 6:00.

9 Q And what did you observe that Sunday when you went to the
10 protest area?

11 A It was just a lot of people out there, from old people to
12 young kids, just kind of being on the street.

13 Q Were there police officers?

14 A Yes.

15 Q Would you say there was a large number of police
16 officers, a small number?

17 A It was -- they were just kind of blocking off traffic, so
18 there was, I would probably say, eight to 10.

19 Q And did you see any police officers or anyone else
20 telling the protesters they had to keep moving?

21 A No.

22 Q That Sunday, did you observe any protestors committing
23 any acts of violence?

24 A No.

25 Q After that Sunday, did you return to the protest area?

1 A Yes, I did.

2 Q When's the next time you returned?

3 A I went the next day, on Monday.

4 Q About what time did you go?

5 A It was about 10:30 in the morning.

6 Q And what happened when you approached the protest area?

7 A I was asked to keep walking. I met a few people. We
8 stopped to kind of communicate about some few things, give our
9 feelings, and we were told to keep walking.

10 Q And who told you to keep walking?

11 A The St. Louis County Police officers.

12 Q And how do you know they were St. Louis County Police
13 officers?

14 A Their uniforms are brown.

15 Q And where were you generally in the protest area when
16 this happened?

17 A I was just getting to where the QuikTrip area was, across
18 the street, almost right by -- there's a car wash right there.

19 Q And when the officers approached you and told you to keep
20 moving, did it appear to you like the protests were about to
21 turn violent?

22 A No.

23 MR. ISAACSON: Objection. Foundation.

24 THE COURT: Overruled.

25 Q (By Mr. Clancy) Did it appear to you that there was some

1 sort of emergency or dangerous situation?

2 A No.

3 Q Did these officers explain to you why you had to keep
4 moving?

5 A No. They just said, "Keep walking."

6 Q Did they explain where a rule that you had to keep moving
7 came from?

8 A No.

9 Q Were you told that you could stand still for five seconds
10 or less?

11 A No.

12 Q Were you told that you had to disperse or leave the
13 protest area?

14 A No, huh-uh.

15 Q Did you videotape any of the encounters with the police?

16 A I did actually.

17 MR. CLANCY: Mr. Bales, would you please play
18 Exhibit 2.

19 (Video played.)

20 Q (By Mr. Clancy) Ms. Holbrook, do you recognize this
21 video?

22 A Yes.

23 Q How do you recognize it?

24 A I took it.

25 Q Do you recognize any of the other people in the video?

1 A Uh-huh.

2 Q Which ones?

3 A Mustafa.

4 Q And which gentleman was he?

5 A He was the tall gentleman in -- I think it's a white
6 shirt.

7 Q And before the video began, were Mustafa or any of the
8 other gentlemen there behaving violently that you could see?

9 A No.

10 Q Were they making any threats that you could see or hear?

11 A No.

12 Q And was there a larger crowd in that video that we can't
13 see?

14 A No, not particularly where we were.

15 Q Were -- it's a little hard to tell from the audio, but
16 were Mustafa and the other gentlemen told they had to leave
17 the protest area?

18 A No.

19 Q What did the officers tell them?

20 A Just to move.

21 Q And what were they trying to do in that video? I'm
22 sorry. What were Mustafa -- what was Mustafa trying to do in
23 that video?

24 A We were going to say a prayer.

25 Q And when they were told to move, could they continue to

1 pray?

2 A Not specifically, no.

3 Q And, Ms. Holbrook, about how long were you in the protest
4 area on Monday, August 18?

5 A It was roughly about seven hours, I would say.

6 Q And were you ever threatened with arrest during that time
7 if you didn't keep moving?

8 A Yes.

9 Q About how many times were you threatened with arrest?

10 A Approximately six.

11 Q And anytime that you were told to keep moving, did you
12 feel you were behaving violently?

13 A No.

14 Q Were you breaking any laws that you knew of?

15 A No.

16 Q How about others that were near you when law enforcement
17 told you to keep moving? Were they breaking any laws that you
18 could see?

19 A No.

20 Q Do you recall if during that day the officers who
21 threatened to arrest you -- if they were from -- which law
22 enforcement jurisdiction they were from?

23 A St. Louis County.

24 Q And how do you know that?

25 A Their brown uniforms and their white and red police cars.

1 Q Was the rule that you had to keep walking enforced
2 consistently throughout the day?

3 A No.

4 Q How so?

5 A It seemed like the later in the day, the larger the crowd
6 grew, it was just more of a crowd control situation versus a
7 command situation.

8 Q So did they enforce the rule more or less consistently
9 later in the day when there was a larger crowd?

10 A Less consistent.

11 Q And did you feel that earlier in the day when they were
12 enforcing the rule more consistently that the atmosphere was
13 more or less dangerous?

14 A It wasn't dangerous.

15 Q Did the requirement that you keep moving affect your
16 ability to express yourself on Monday?

17 A It did.

18 Q How so?

19 A To different people I met while I was out there on the
20 street. There was a 60-year-old lady who was there, very
21 visibly upset for her own reasons, and I just felt the need to
22 want to comfort her because she was very visibly upset. There
23 was a 13-year-old kid that was out there by himself. Whatever
24 reasons brought him out there, he was by himself, and there
25 was reporters out there that wanted to hear stories, wanted to

1 know why I was there, and it was just hard to assist the
2 crying lady or comfort the young boy that was by himself, just
3 protect him. He was a little kid, you know, and it's hard to
4 do when you're being herded around the block.

5 Q At any point on Monday, did any officer tell you about an
6 alternative protest zone or a protestor assembly zone?

7 A No.

8 Q Did you go back to the protest area after Monday?

9 A I did stop by there on Tuesday.

10 Q For about how long were you there? Do you remember?

11 A Only maybe five to 10 minutes.

12 Q And what happened when you went to the protest area on
13 Tuesday?

14 A I actually stopped to talk to somebody I had spent time
15 with the day before. I saw him on the street, and I wanted to
16 just stop and talk to him, and I was approached by a reporter
17 from Cincinnati, and she was asking me a few questions about,
18 I guess, my experience from being out on the street, and I
19 wasn't able to communicate with either one of them due to the
20 nature of having to continue to move.

21 MR. CLANCY: Mr. Bales, could you please play
22 Exhibit 1.

23 (Video played.)

24 Q (By Mr. Clancy) Ms. Holbrook, do you recognize this
25 video?

1 A Yes.

2 Q How do you recognize it?

3 A I took it.

4 Q And is that your voice in the video?

5 A It's one of them, yes.

6 Q Could you describe what's happening in the video?

7 A This is where I was talking to the reporter from
8 Cincinnati. She had stopped and asked me a few questions as
9 to what was going on, and I was kind of explaining what I
10 experienced the day before and what was kind of -- what I
11 thought was going on at that moment, and then I left.

12 Q Did the interview continue after this video?

13 A No.

14 Q Why did it not continue?

15 A Because I just wasn't going through it again the next
16 day. I wasn't there to protest. I wasn't there to walk. I
17 was there to speak with a few people, but due to the nature of
18 having to walk around, that wasn't what I was there for, so I
19 just left.

20 Q Did you feel that being forced to move affected the
21 interviewee's ability, the interviewer's ability to conduct
22 the interview?

23 MR. ISAACSON: You know, I would have to object as
24 speculative, Your Honor.

25 THE COURT: I'll sustain that.

1 Q (By Mr. Clancy) Did it seem like the reporter was having
2 a hard time interviewing you while you had to keep moving?

3 A Yes.

4 Q How so?

5 A Just because we had to keep moving. She was actually
6 writing on a piece of paper, trying to document some of the
7 things I was saying to her for, I guess, her report, and she
8 wasn't able to get that down when we were being asked to move.

9 Q Were any of the -- were either you or the reporter
10 behaving violently prior to the video being shot --

11 A No.

12 Q -- that we can see? And the officers that we see on this
13 video, are you able to tell if they were Missouri State
14 Highway Patrol or County or some other jurisdiction?

15 A They're St. Louis County.

16 Q And how can you tell that?

17 A The uniforms and their cars.

18 Q And after this video was shot -- after this video was
19 shot, did anyone tell you that you had to leave the protest
20 area?

21 A No.

22 Q No. Ms. Holbrook, have you had a chance to review the
23 declaration you submitted on September 26th?

24 A Yes.

25 Q And is everything in your declaration accurate?

1 A It is. One thing I missed prior to signing it was that
2 the video, this particular video that we're watching now -- it
3 states that it was on Monday; it was actually on Tuesday.

4 Q Thank you.

5 THE COURT: Can you all -- those were numbered, I
6 think. Weren't those 1, 2, 3?

7 MR. CLANCY: Your Honor, this is Exhibit 1, the video
8 that we're talking about.

9 THE COURT: Okay. No. Yeah. In the affidavit, were
10 they numbered 1, 2, 3 or were they numbered A, B, C? I'd like
11 to have some coordination with what was filed in the brief,
12 and I -- let me see.

13 MR. ISAACSON: Paragraph 12 indicates Exhibit A.

14 MR. CLANCY: Yeah, it was A, B, C.

15 THE COURT: Yeah. So it would be helpful if I knew
16 how the ones we've seen are -- you know, which is A, which is
17 B. I've got 1 and 2, and so I know I recognize them. I've
18 looked at them before, but I -- you know, for the record,
19 could you do that?

20 MR. CLANCY: Yes, Your Honor. The Exhibit 2 that we
21 played initially --

22 THE COURT: Yes.

23 MR. CLANCY: -- is Exhibit C of Ms. Holbrook's
24 declaration.

25 THE COURT: Okay.

1 MR. CLANCY: And Exhibit 1 that we just played is
2 Exhibit A of Ms. Holbrook's declaration.

3 THE COURT: And that's -- and this one is the 19th,
4 not the 18th?

5 MR. CLANCY: That's correct, Your Honor.

6 THE COURT: Okay.

7 Q (By Mr. Clancy) Ms. Holbrook, did the requirement you
8 keep walking influence your decision to leave the protest area
9 on Tuesday?

10 A It did.

11 Q How so?

12 A I just felt a little bullied. I didn't -- I wasn't there
13 to walk. I wasn't there to protest. I didn't come with
14 signs. I wasn't there to yell all day long. That wasn't my
15 intention.

16 Q And did you go back to the protest area after that
17 Tuesday?

18 A Not until the following Saturday when I was in the area.

19 Q And what did you see when you went to the protest area on
20 Saturday?

21 A There was people in prayer circles, holding hands,
22 praying. They had Bibles open and megaphones. There was
23 people barbecuing. There was people selling shirts, you know,
24 small vendors, and it just was like a -- it seemed like a
25 sense of community.

1 Q Was anyone forcing these individuals to keep moving?

2 A No.

3 Q Did you hear anyone say that the "keep walking" rule had
4 been repealed?

5 A No.

6 Q Did anyone mention the alternative protest area or
7 protestor assembly zone?

8 A No.

9 Q What did you think of the activities that you saw on
10 Saturday, August 23rd?

11 A I think it just showed a sign of community. People were
12 coming out. They left all their harsh emotions at home, or
13 the people with the harsh emotions stayed at home that
14 particular day, but it just -- it was peaceful. It was the
15 Ferguson that I grew up in. It was just casual.

16 Q And could these activities have occurred if the "keep
17 walking" rule was enforced at that time?

18 A Not at all.

19 Q Did you only experience enforcement of the "keep walking"
20 rule during the daytime?

21 A Yes.

22 Q And in your time in the Ferguson protest area, did you
23 see -- ever see any violence by community members during those
24 daylight hours?

25 A No.

1 Q Overall, did the "keep walking" rule affect your ability
2 to express yourself?

3 A Yes.

4 Q How so?

5 A It didn't give me an opportunity, like with the lady, the
6 older lady. She had all her emotion for her personal reasons.
7 She needed somebody that particular day. I wanted to be that
8 person. For whatever reason, I was drawn to her, and I wasn't
9 able to comfort her and talk to her and calm her down. And
10 just watching at night, not being there at night because it
11 was a much more violent situation. When I was there during
12 the day, I just felt compelled to -- to talk to the other
13 people that were there and the little boy that was there. He
14 had something he wanted to say. He came there by himself, and
15 he wanted to communicate and he wanted to --

16 MR. ISAACSON: Let me object as to what the boy
17 wanted without a better foundation, Your Honor.

18 THE COURT: Yeah, it's sustained. It doesn't really
19 make any difference anyway. You can pull the mike a little
20 closer to you, please. Thank you.

21 THE WITNESS: Continue?

22 THE COURT: Yeah. Let him ask you a new question.

23 THE WITNESS: Oh, okay.

24 MR. CLANCY: Actually, Your Honor, we would move to
25 admit Exhibits 1 and 2 into evidence.

1 THE COURT: 1 and 2 are received into evidence.

2 MR. CLANCY: I pass the witness.

3 Thank you, Ms. Holbrook.

4 THE WITNESS: Thank you.

5 THE COURT: All right. Cross-examination. Who
6 wishes to go first? Okay. Go ahead.

7 CROSS-EXAMINATION

8 BY MR. SHUMAN:

9 Q Johanna, I'm sorry. I didn't get your name. I was
10 having trouble hearing.

11 A No problems. Johanna Holbrook.

12 Q Holbrook?

13 A Yes.

14 Q Okay. Thank you. And so you were talking about how you
15 were there on Saturday, the 18th, and you arrived in the early
16 evening?

17 A That was Sunday evening.

18 Q Sunday evening?

19 A Yes, sir.

20 Q So that's the 18th, though, Sunday. Okay.

21 MR. ISAACSON: 17th.

22 A 17th. I don't have a calendar in front of me.

23 Q (By Mr. Shuman) But it was a Sunday?

24 A A Sunday, yes, sir.

25 Q I got the days wrong. Sunday. And you said that was in

1 the early evening?

2 A Yes.

3 Q About what time?

4 A I would say around 5:00. It was maybe 6:00. It was just
5 getting dark. It was just before dark.

6 Q Okay. How long did you stay that day?

7 A Maybe 30 minutes.

8 Q Okay. And I thought you said there were eight to 10
9 police officers.

10 A That I noticed.

11 Q That you noticed. Okay. Do you recall literally what
12 was said to you that threatened you with arrest?

13 A It wasn't that particular day. There was no threats that
14 day. On Sunday evening?

15 Q Sunday evening, not threatened with arrest?

16 A No, sir. There was a lot of foot traffic, so they
17 were -- the police were only blocking off car traffic for the
18 safety of the people.

19 Q When were you threatened, threatened with arrest?

20 A Monday.

21 Q And what time of day was that?

22 A It was probably 10:30 or 11:00 in the morning, around
23 that time when I first got down to the West Florissant block.

24 Q Okay. I thought you said it was a St. Louis County
25 officer that threatened you.

1 A Yes.

2 Q Was it one or more than one?

3 A There was a small group, so I can't say for sure if it
4 was just -- there's being a group of people and a group of
5 police officers. One spoke to me. One spoke to another
6 person. One spoke to another person. So for myself, I would
7 say only one.

8 Q Can you recall what they told you? I mean I know you --
9 generally, they threatened you with arrest, but do you recall
10 the words?

11 A It was -- when I stopped to speak with people on the
12 street, when I first saw them, we started communicating about
13 our feelings about the whole scenario, and it was just, "You
14 have to keep walking," and then when it didn't happen
15 instantly, it was, "Keep walking or you'll go to jail." Those
16 were the only words. It wasn't confrontational by any means.

17 Q Okay. I may not have written down all the instances of
18 when you were trying to speak. You told us about you were
19 trying to assist a crying lady.

20 A Uh-huh.

21 Q What were you trying to communicate to that lady?

22 A I was just trying to tell her she'd be okay. She was
23 down on the ground. She was very visibly crying and upset,
24 and I just -- she didn't have anybody with her, and I just
25 felt compelled to say, "You've got to get up."

1 Q Do you know what she was doing on the ground?

2 A She was crying. She was emotionally upset and was just
3 kind of knelt down to herself crying.

4 Q Was there anything that kept her from getting up?

5 A Her emotions.

6 Q And you were also helping a kid, I thought you said.

7 A There was a 13-year-old boy that was out there.

8 Q And tell me again those circumstances of helping that
9 kid.

10 A Well, I guess I wouldn't say -- for him, it wasn't
11 necessarily help. The lady was clearly upset. She looked
12 like she needed a hug. That to me is a little bit of help.
13 The 13-year-old boy, he was out there by himself, and when we
14 found out he was by himself, by this time, it was later in the
15 afternoon. The crowd was growing a little more, and myself
16 and a couple other people on the street just felt like since
17 he was 13 and there was a lot of emotion on the street that we
18 just wanted to keep him close to us because he didn't have an
19 adult with him.

20 Q Okay. You weren't really trying to communicate anything
21 to that kid, were you? More like comfort him, make sure he's
22 okay?

23 A Yeah, we were just kind of, as adults, wanted to know why
24 he was out there, why he felt compelled to bring himself out
25 at the age of 13 with nobody with him.

1 Q Did you get to ask him those things?

2 A Yes.

3 Q And you were able to take care of him and prevent him
4 from whatever harm might have happened to him?

5 A Yeah. At one point, we walked. He walked because we had
6 to keep walking, so at one point, he walked with us and then
7 went off somewhere.

8 Q This second video that was shown --

9 A Uh-huh.

10 Q -- I thought you said that you were asked -- you were
11 being asked questions by a lady who was wondering what you
12 were doing there.

13 A Uh-huh. A reporter from Cincinnati, she said she was.

14 Q And she was able to answer your questions -- ask you the
15 questions?

16 A She asked me a few questions. For a brief moment, she
17 asked one or two questions that I was able to answer.

18 Q And you answered the questions?

19 A Like the first couple questions, yes.

20 Q Did you have anything else you wanted to say to that
21 reporter?

22 A Probably because we didn't finish our conversation, if
23 you will. We never finished it. We had started a
24 conversation.

25 Q Did you walk on?

1 A Yes. I was asked to move.

2 Q And what did the reporter do?

3 A She went a different way.

4 Q She could have walked on with you?

5 A She could have, but I was going to my car to leave.

6 Q And is this the lady who was unable to write something
7 down for you?

8 A Write something down for me?

9 Q I apologize because I was having --

10 A No. That's okay.

11 Q -- a little trouble hearing what you were saying.

12 A Oh, that's okay. I'm sorry. No. She was writing
13 down -- she was asking me questions, and I guess she was
14 writing down my answers.

15 Q This was the reporter?

16 A Yes, yes, sir.

17 Q And you were able to write down the answers for her?

18 A No.

19 Q But you were able to answer the questions?

20 A Yes. She asked me a question, and then she wrote my
21 answer. She asked me a secondary question. She started to
22 write that answer, and then that's when the officers came up
23 and told us all to move.

24 Q And you went one way, and she decided that she would go
25 the other way?

1 A Uh-huh.

2 THE COURT: Ma'am, you need to answer yes or no out
3 loud so the court reporter --

4 A Yes, sir.

5 THE COURT: -- can take it down?

6 MR. SHUMAN: Thank you. That's all I'm going to be
7 asking.

8 THE WITNESS: Thank you.

9 CROSS-EXAMINATION

10 BY MR. ISAACSON:

11 Q Good morning, ma'am. I just have a few questions.

12 A Good morning. How are you?

13 Q You first showed up on Sunday, the 17th, correct?

14 A Correct.

15 Q And you indicated that you saw eight to 10 police
16 officers; is that correct?

17 A Correct.

18 Q And there was also a large number of people there; is
19 that fair?

20 A Yes, sir.

21 Q Okay. And that's on that Sunday. And then you arrived
22 the next day, and you indicated -- you just told us that you
23 perceived a lot of emotion on the street; is that correct?

24 A Correct.

25 Q All right. And what did you mean by that?

1 A By a lot of emotion?

2 Q Yeah.

3 A Just the people that I ran into. There wasn't a large
4 group of people like there was in the evenings due to, I
5 guess, work and things like that. It was an early morning on
6 a Monday, and so there was not as many people, but the people
7 that I met seemed very passionate.

8 Q And there was energy?

9 A Say again.

10 Q And there was energy to this group, correct?

11 A It wasn't really a group. The lady, the 60-year-old
12 lady, she was by herself, and she had her own emotion to the
13 circumstance and the situation, so she was definitely crying.
14 I wouldn't say she was angry. She was crying. She was upset.

15 Q And did she exhibit any sort of disability with regard to
16 her ability to walk?

17 A No.

18 Q Okay. How about the reporter? Did she exhibit any
19 disability with regard to her ability to walk?

20 A No.

21 Q All right. You're not telling the courtroom that you
22 can't talk and walk at the same time, correct?

23 A No.

24 Q All right. And same with that reporter? She appeared to
25 be capable of walking and talking at the same time?

1 A That's correct.

2 Q And also writing down what you say at the same time?

3 A As well as walking and writing --

4 Q Yeah.

5 A -- and asking the questions? I feel like that was a
6 little hard.

7 Q You're not saying she couldn't do it?

8 A She could do it.

9 Q Okay. Did you have any disability at the time with your
10 ability to walk?

11 A No.

12 MR. ISAACSON: I don't have anything else, Your
13 Honor.

14 THE COURT: Any redirect?

15 MR. CLANCY: No, Your Honor.

16 THE COURT: All right. You may step down, ma'am.

17 THE WITNESS: Thank you.

18 THE COURT: You may call your next witness.

19 MR. REHN: Thank you, Your Honor. We will be calling
20 Grant Doty.

21 THE COURT: All right. And would you remind me your
22 name as well?

23 MR. REHN: I'm Nathan Rehn.

24 THE COURT: All right. Thank you. And I would ask
25 you to pull that mike close to you. It's not as easy to hear

1 in this courtroom as it may seem.

2 Mr. Doty, would you step up here to the clerk to be
3 sworn?

4 **GRANT DOTY,**

5 HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
6 FOLLOWS:

7 DIRECT EXAMINATION

8 BY MR. REHN:

9 Q Good morning, Mr. Doty.

10 A Good morning.

11 Q What is your current occupation?

12 A I'm a staff attorney at the American Civil Liberties
13 Union of Missouri.

14 Q And have you visited the scene of the protests in
15 Ferguson?

16 A I have. I have been to Ferguson 10 times since the
17 shooting of Michael Brown.

18 Q What was the date of your first visit?

19 A My first visit was on August 14th.

20 Q And what was your purpose in going there?

21 A I went on that first day because of reports that we had
22 heard that individuals were told that they had to stop
23 photographing before the police fired tear gas.

24 Q Did you actively participate in any protest activities?

25 A No. At each of the 10 visits, I've carried a small 8-1/2

1 x 11 sign that said, "American Civil Liberties Union Observer"
2 or "Free Speech Observer." I wanted to make sure that I was
3 observing and not perceived as a participant.

4 Q At some point, did you become aware that there was a rule
5 against standing still being enforced in that area?

6 A Correct. I learned about that on the morning of the 18th
7 while I was in the office.

8 Q And then that was the same date as the Court's hearing on
9 Plaintiff's motion for entry of a temporary restraining order;
10 is that right?

11 A Correct. That was later that afternoon.

12 Q And did you attend that hearing?

13 A I did attend that hearing.

14 Q At that hearing, did you hear reference to an alternative
15 protest zone being established in Ferguson?

16 A Yes. The first I had heard of it was Attorney General
17 Koster represented to our client that an alternative protest
18 zone had been set up sometime after 2:30 that same day, and I
19 later heard Andrea Spillars testify under oath from -- under
20 testimony from General Koster that that zone in fact had been
21 set up, a three- to four-acre zone.

22 Q Had you heard about the existence of such an alternative
23 zone prior to that hearing?

24 A No. That was the first I had heard of it.

25 Q Now, after that hearing, did you return to Ferguson?

1 A I did. I returned to my office after the hearing,
2 changed out of my suit, and I immediately went to Ferguson.

3 MR. REHN: I'd like to display Exhibit 27, which is a
4 map.

5 THE COURT: And is this the same as the one that was
6 attached to this witness' declaration?

7 MR. REHN: That's correct, Your Honor. This was
8 Exhibit 1 to the witness' declaration.

9 THE COURT: All right. Thank you.

10 Q (By Mr. Rehn) Mr. Doty, did you create this map?

11 A Yes. This is my exhibit I created wholly myself.

12 Q And what does this map depict, if you could just give us
13 a general overview?

14 A It's what I would consider the main protest area in the
15 weeks immediately following the shooting of Michael Brown.
16 The yellow area is where the protesters were mostly, and then
17 that's where the five-second rule was enforced. The southern
18 end of that yellow zone is Ferguson Road, and then that's West
19 Florissant, and the zone basically was from the QuikTrip in
20 the north to the McDonald's in the south.

21 Q And you traveled to this area on August 18th after the
22 temporary restraining order hearing?

23 A I did.

24 Q Did you see any posting or other notice that there was an
25 alternative protest zone to that yellow area that you've

1 marked here?

2 A No, I did not. I drove down that or -- excuse me --
3 north along West Florissant and was stopped by some police
4 officers or Highway Patrol and asked them where the
5 alternative free-speech zone was, and they said, "We don't
6 know what you're talking about. Park in the press area." So
7 I went and parked in the press area.

8 Q And did multiple law enforcement officers communicate
9 with you about the alternative protest zone?

10 A I did. And so after I got out of my car, I parked there
11 in the area right behind the purple diamond, which is the
12 press zone, and I asked two additional officers immediately
13 where it was, and they similarly did not know, and then later
14 that evening, I asked more officers, and no one knew of an
15 existence of the zone.

16 Q Now, at that point in time, did you walk on this stretch
17 of West Florissant Avenue between the McDonald's and the
18 QuikTrip?

19 A I did. So I got out of my car and tried to identify this
20 alternative free-speech zone. I walked north past the
21 QuikTrip, I think about a little over a half of a mile.

22 Q Were you ever told to keep moving by a law enforcement
23 officer?

24 A I was twice during that, during that visit.

25 Q And did you observe any protestors in the area at that

1 time?

2 A I did. It was pretty full.

3 Q Did you see law enforcement officers ordering any of the
4 protestors to keep moving?

5 A I did.

6 Q And as you were observing that, would you say that the
7 five-second rule was being consistently applied throughout the
8 protest zone?

9 A It completely wasn't. It had to do with the officer who
10 happened to see you. I stopped a number of times with taking
11 photographs, and many times, I wasn't -- I wasn't told to move
12 on at all, and I was right in front of an officer. And other
13 times, I was told to move, and I observed others similarly
14 being told to move or not.

15 Q Did you notice any general differences in the type of
16 persons who were more likely to be told to move?

17 A Yeah. I was --

18 MR. ISAACSON: I don't know that there's an adequate
19 foundation unless we understand the numbers that were there,
20 the percentages of people, and the like. I mean if we're
21 admitting gut impressions, let's say it that way, but I don't
22 know statistically there's a foundation laid.

23 THE COURT: Well, I don't think there's a statistical
24 foundation, but I'm going to allow him to testify to this, and
25 you can cross-examine him, so overruled. Go ahead.

1 A Yeah. I mean I'm a 48-year-old white man, and I was not
2 told to move as frequently as I saw African-Americans, and
3 particularly, young African-Americans were told to move more
4 frequently than I was.

5 Q (By Mr. Rehn) Did you speak to any of the protestors?

6 A I did. In fact, some of the times I was stopping, I was
7 talking to them, yes.

8 Q And some of those times were times where you were told to
9 move?

10 A Yes. And sometimes I was not told; I was not told I had
11 to move.

12 Q Did any protestors tell you they were aware of an
13 alternate protest zone?

14 A No one knew about it. In fact, because I had left the
15 TRO hearing and I had heard them testify that there was this
16 alternative zone, I asked anybody who knew about it. They
17 didn't. I asked after they were told to move, were they told
18 they could move to another location, and no one was told about
19 an alternative zone.

20 Q So after that visit on August 19th, did you ever reach
21 out to state officials to find out more information about this
22 alternative protest zone?

23 A Yeah. The following morning, I had a hearing in Cole
24 County Court in Jefferson City, so I stopped by the Attorney
25 General's office there at the Supreme Court, and I talked to a

1 senior official and said, "I couldn't find it last night."

2 Q And what did they tell you?

3 A They said they would get back with me.

4 Q And did they ever get back with you?

5 A Yeah. As I was driving back to St. Louis, I got an
6 email, and I was told where I could look.

7 Q And did you then travel back to the site to see the
8 location where you were directed to?

9 A Yes. Before I returned to the office, I stopped back at
10 Ferguson.

11 Q And what location was that?

12 A So I went -- I went to the -- I parked again in the media
13 zone, and then I walked to what I was told was a used car lot,
14 and it's represented on my map that I created in red.

15 Q This red rectangle here towards the bottom of the
16 highlighted area?

17 A Correct. South of the free-speech -- the walking area.

18 Q South of the yellow zone there?

19 A Yeah.

20 Q Did you see any notice that that was an alternate protest
21 zone?

22 A No. It was not marked, and it was not occupied.

23 Q Was there any other indication that protestors were free
24 to use that area?

25 A There was none. In fact, I saw the owner who was outside

1 of his property. It happens to be a used furniture store, and
2 I asked him if this was the free-speech zone, and he said,
3 "No. It's my private property." And I asked him if anybody
4 had contacted him to use the property, and he said, "No. No
5 one can use my property."

6 Q Was there ever a public announcement made about that
7 area?

8 A So I went back to the office. I had visited there. It
9 was about 2:00, 2:15, or 2:30, and so I returned to the
10 office, and sometime after 5:00, I -- there was a press
11 release.

12 Q I'd like to put up Exhibit 3, and this is also Exhibit 2
13 of Mr. Doty's declaration, Your Honor. Is this the press
14 release you were referring to?

15 A Yes.

16 Q And you said this came out around sometime after
17 5:00 p.m., on August 19th?

18 A Yes, and that was consistent with what Captain Johnson
19 told me earlier in the day.

20 Q And is -- so that was --

21 THE COURT: Can I see what it says? You're pulling
22 up pieces that I really don't need to see. I need to see the
23 document.

24 MR. REHN: Yeah. If we could just start with the
25 date and just get the text of the release.

1 Q (By Mr. Rehn) So this was about 30 hours after the TRO
2 hearing?

3 A Correct. Well, probably -- probably closer to 24 hours.

4 Q Okay. And this media alert refers to an approved
5 assembly zone, a protestor assembly zone, being located at
6 that location you marked, you identified earlier?

7 A That is correct, yes.

8 Q And it also says there is a new media staging area being
9 established?

10 A Yes, it does.

11 Q Was there already a media staging area?

12 A There was. In fact, on the map, I reflected that by the
13 purple diamond. It was next to the McDonald's, and it's where
14 I had parked the previous two times.

15 Q So, Mr. Bales, if we could go back to Exhibit 27. So
16 this purple diamond, you said, was the media staging area that
17 existed prior to this press release being put out?

18 A That is correct.

19 Q And then where was the -- where did the press release
20 designate the new media staging area would be?

21 A That it was going to be down -- excuse me -- north along
22 West Florissant. It's represented by that blue dot, and that
23 happens to be the storage -- the monthly storage facility
24 that's located on West Florissant.

25 Q So in the press release that established this protester

1 assembly zone, in that same press release, they moved the
2 media staging area up to this northern location?

3 A Correct. I believe .3 miles.

4 Q All right. Can I refer to the protestor assembly zone as
5 the PAZ?

6 A Yes.

7 Q Do you understand that? And was the PAZ visible from
8 that new media staging area?

9 A Absolutely not.

10 Q Mr. Bales, could we display Exhibit 5, please.

11 If you could, identify this photograph for me.

12 A Yeah. This is a picture I took on the evening of the
13 19th, so this would have been my sixth visit to Ferguson and
14 my second visit of that day.

15 Q So this is sometime after there had been this press
16 release put out?

17 A Correct.

18 Q And there's a sign here. That's -- that was new; that
19 wasn't there previously?

20 A That was not there earlier in the day, and it was
21 certainly not there the day before.

22 Q Did you observe any protesters using the PAZ?

23 A No, never. I mean not on this day I did not.

24 Q And would the PAZ have been visible from the old media
25 staging area?

1 A You know, it would have been probably one tenth or more
2 of a mile. You would have been able to see that it had been
3 occupied. I believe it would not be easy to see any signs or
4 what the words on the sign would have been had there been
5 signs.

6 Q Aside from the visibility issue, were there any other
7 problems that you observed with the PAZ?

8 A Yeah. You can see there's no lighting in the zone.
9 There's a spotlight across the street. There's no
10 porta-potties, no water facilities, among other things.

11 Q Now, that same visit when this picture was taken, did you
12 observe any protestors in the main protest area?

13 A I did. It was -- it was pretty full.

14 Q And did you walk in that area again?

15 A I did walk that whole area from -- from both -- from the
16 south past the QuikTrip, about a half mile north of there.

17 Q Did you observe law enforcement officers enforcing a "no
18 standing" rule?

19 A I did. The same -- same haphazard or arbitrary
20 enforcement as I had seen the night before.

21 Q And did you see anyone being arrested?

22 A That day, I did see someone get arrested in front of the
23 McDonald's.

24 Q Did anyone tell you why that person was being arrested?

25 A Yeah. It was an African-American woman --

1 MR. ISAACSON: I would have to object until a
2 foundation is laid that that person had an adequate
3 understanding of why that arrest occurred.

4 THE COURT: Yeah, and, again, I'll overrule that, but
5 you could tell me who told you and why they were arrested, how
6 you know.

7 A I was -- I was at the corner, and I was talking to Jack
8 Dorsey, who's the founder of Twitter, and he had seen it, and
9 I turned to Jack Dorsey and said, "What just happened there?"
10 He said, "She was arrested for not moving."

11 MR. SHUMAN: I want to object to the hearsay.

12 THE COURT: Yeah. Overruled. I mean you can cross.

13 MR. REHN: Your Honor, this is a present sense
14 impression.

15 THE COURT: This is a preliminary injunction hearing.
16 I'm going to hear -- you know, I'll consider it, and I'll hear
17 it not necessarily for the truth, but go ahead.

18 MR. REHN: And I would just observe this was a
19 present sense impression, so I think hearsay wouldn't bar it.

20 Q (By Mr. Rehn) Were you personally ordered to move during
21 that visit when you were in the main press?

22 A I was. I had a -- I was on the phone at one point, and I
23 was walking in circles but, apparently, not walking
24 sufficiently, and so I was told I needed to keep moving.

25 Q And when you were told to keep moving, did any law

1 enforcement officers tell you about the PAZ?

2 A No, no.

3 Q Did you hear them tell anyone else about the PAZ?

4 A In none of my 10 visits did I ever hear anybody tell us
5 about the alternative speech zone.

6 Q Did you return to this area any other times?

7 A So the 19th, I was there twice, my fifth and sixth visit,
8 and I returned four additional times since then.

9 Q What was the day of your next visit?

10 A It was the 21st, I believe.

11 Q And on that visit, did you observe any protestors in the
12 PAZ?

13 A I did. It was the very first time I had seen people in
14 the zone.

15 Q And roughly how many people were there?

16 A Between four and 10.

17 Q What did they tell you about the PAZ?

18 A They thought it was -- they thought it was a joke. They
19 were there basically resting their feet because they had been
20 walking back and forth. Other complaints were there were no
21 porta-potty facilities, no water for them. They thought no
22 one could see their signs that they were carrying, and the one
23 young woman that I spoke to complained that the light that was
24 on here --

25 MR. ISAACSON: Your Honor, are we taking hearsay as

1 it comes?

2 THE COURT: Well, you can object. You can object to
3 anything. I'm going to hear it. I'm going to hear what they
4 say happened out there, and I'll hear any cross-examination,
5 and then I'll determine whether I should give it any weight.

6 MR. ISAACSON: Very well. Thank you. I won't --

7 THE COURT: Okay. Go ahead.

8 A But the young woman -- one of the complaints she had that
9 night was this light that you can see that was shining from
10 across the street wasn't even on, and she told me she felt
11 unsafe.

12 Q (By Mr. Rehn) And I'd like to just show one more exhibit.
13 If we could put Exhibit 6 up.

14 And could you please describe what this is?

15 A Yeah. This is another picture that I took. I took it on
16 the 25th. It may have been my ninth visit there, and it is
17 taken from the second press zone, the moved press zone, so I'm
18 standing here, right in front of the storage facility, and I'm
19 taking my picture south towards the McDonald's and where the
20 alternative free-speech zone is.

21 Q And is there any -- would you be able to see the
22 alternative zone from here?

23 A Absolutely not. Can't see it.

24 Q So based on your observations, Mr. Doty, would you say
25 that the PAZ was an adequate venue for protestors to

1 communicate their message?

2 A It was absolutely not adequate.

3 MR. REHN: Thank you. No further questions.

4 I would move Plaintiff's Exhibit 27, Plaintiff's
5 Exhibit 2, Plaintiff's Exhibit 5, and Plaintiff's Exhibit 6
6 into evidence.

7 THE COURT: They are received into evidence.

8 So was the media alert Exhibit 2 or Exhibit 3?

9 MR. REHN: I believe it was Exhibit 2. Oh, it was 3.
10 My mistake.

11 THE COURT: Okay. So Exhibit 3, Exhibit 5, Exhibit
12 6, and Exhibit 27 are received into evidence.

13 You may cross-examine.

14 CROSS-EXAMINATION

15 BY MR. SHUMAN:

16 Q Hi, Mr. Doty.

17 A Hi.

18 Q Mike Shuman with the County.

19 THE COURT: Okay. You need to keep your voice up. I
20 couldn't hear any of that, so pull the -- you can move the
21 base of that mike closer to you, or you can step closer to it.

22 Q (By Mr. Shuman) Mr. Doty, you said you became aware of a
23 rule about protesting. Why do you call it a rule?

24 A Why did I call it a rule?

25 Q Yeah.

1 A It was just a complaint we got at the ACLU office the
2 morning of the 18th.

3 Q How do you know it was a rule?

4 A I mean I don't -- I mean you can call it a policy or
5 practice. I don't know. "Rule" might not be the right word.
6 It was a custom. It was a custom, a policy, a practice.

7 Q Do you know who promulgated this rule?

8 A I think from the testimony that I heard at the TRO
9 hearing it was the Highway Patrol under Captain Johnson and
10 St. Louis County.

11 Q Why are you calling it the five-second rule?

12 A Because we were told that you had to move and if you
13 stopped moving for five seconds you would be arrested.

14 Q Who told you that?

15 A I think the complainant, the person who complained to the
16 ACLU, told us that. My client told us that as well, and then
17 I observed it.

18 Q Tell me what you observed.

19 A I was walking in circles and told I needed to keep
20 moving.

21 Q Did people -- did any officer look at a watch and say,
22 "Okay. You've got five seconds, and now you've got to move"?

23 A Not in the two incidents that I happened on, heard on the
24 18th, but I -- you know, I did hear the officers say, "You've
25 got to keep moving. You've got to move every five seconds."

1 Q Repeat that, please. I missed that.

2 A I said I did not -- I was not told that I had to move in
3 five seconds. I was told to keep moving, but I did hear the
4 word "five seconds" when I heard other people be told about
5 this rule, and that would have been on the 18th and the 19th.

6 Q Did you hear anything about any five seconds after the
7 19th?

8 A Yeah. The 21st, when I went back and I saw the people
9 occupying the alternative free-speech zone, they told me of
10 the five-second rule as well, and I just -- I also walked
11 there.

12 Q Who is "they"?

13 A The four to 10 people that I talked to inside the PAZ.

14 Q And those were all -- none of those people were law
15 enforcement officers, though, right?

16 A No, no, no, they were not.

17 Q And you said something about how young African-Americans
18 were told to move more often than you were?

19 A Absolutely.

20 Q Now, you had a sign explaining that you were an observer
21 all the time, right?

22 A Correct.

23 Q Okay. Did you look for other white men to see what was
24 told to them so that you could compare what was said to
25 African-Americans?

1 A I mean I saw a lot of the reporters were white, and I
2 don't think they were told as well.

3 Q You saw they were reporters?

4 A Yes.

5 Q Did you see black reporters being told to move more than
6 white reporters were told to move?

7 A You know, I mean, I don't know. I wasn't going there to
8 compare what reporters were told to do or not to do.

9 Q You don't know?

10 A I don't know.

11 Q About this PAZ -- why are no porta-potties being there a
12 problem for communicating?

13 A Well, it just made it un-user friendly. I mean why would
14 you go there if you didn't have the facilities that you could
15 have had in the -- the other zone. I mean in the days that I
16 went before when people were at the QuikTrip or in the
17 McDonald's area, there's porta-potties that were along the
18 street. People could use them. And now you're told to go to
19 an area that does not have those facilities. I think the
20 people that used them that I spoke to were troubled by that.

21 Q Anything stop anyone at the PAZ from leaving and finding
22 a porta-potty?

23 A I'm sorry?

24 Q Was there anything that would prevent a person at the
25 PAZ -- I don't mean to make light of this, but when they need

1 to use the restroom -- to go and find a restroom and then come
2 back and communicate?

3 A No. I mean the young lady that I spoke to that was
4 concerned about the safety said she just urinated in the back
5 of the lot. She just had her boyfriend stand so that no one
6 could see her urinate.

7 Q But I didn't ask that. What I asked was, was there
8 anything that prevented somebody from walking out and finding
9 an appropriate restroom and then coming back and
10 communicating?

11 A They'd have to enter the zone that they had to keep
12 walking. I don't know if they were handicapped or if they
13 were limited. I don't know if they had any physical
14 limitations that prevented them from walking. I didn't ask.

15 Q Okay.

16 A But if they did, I assume they couldn't go down there and
17 use those restrooms.

18 Q You assume that?

19 A Yes.

20 Q You don't know that?

21 A I assume based on the rule they would have been arrested
22 had they not been able to keep walking to the restroom,
23 correct.

24 Q Why wouldn't they be able to keep walking to the
25 restroom?

1 A I said I don't know. I didn't ask them if they were
2 handicapped.

3 Q You don't know?

4 A Yes, I don't know.

5 Q But they had porta-potties outside the PAZ?

6 A In the area that they had to keep walking, yes.

7 Q What else about the PAZ was not adequate for
8 communicating?

9 A I mean its distance from where the media's -- the media
10 was. It was like -- I think it was -- by the time it had
11 moved, it would have been about 4/10 of a mile.

12 Q Did anything prevent media from going to the PAZ?

13 A I do not believe anything would have prevented them from
14 going to the PAZ.

15 Q And had they, I imagine people could have spoken to them?

16 A No one was -- the only time I ever saw people in the PAZ
17 was on the 21st.

18 Q My question was: If the media had gone to the PAZ, would
19 anything have prevented the people who were there to use the
20 PAZ from communicating with the media?

21 A No.

22 MR. SHUMAN: Well, I think that's all I want to ask.
23 Thank you.

24 THE COURT: All right. Cross-examination,
25 Mr. Isaacson.

CROSS-EXAMINATION

1
2 BY MR. ISAACSON:

3 Q Good morning, Mr. Doty.

4 A Good morning.

5 Q The area we're talking about -- there was a stretch
6 there. I don't know if you -- can you pop the map up for me?
7 The yellow shaded area is a walkway, and let's see. There we
8 go. And we're talking from Canfield Drive from Ferguson Drive
9 is about what -- three, three and a half blocks? Is that
10 fair?

11 A Yeah. I think it's 3/10 of a mile, yes.

12 Q Okay. And based on what you observed, the -- the
13 encouragement to keep moving and all that, was it always
14 within that 3/10 of a mile?

15 A That was my experience, yes.

16 Q And you indicated that when you went there that Monday
17 night, the 18th, the area was pretty full of people; is that
18 fair?

19 A Correct. It was.

20 Q And I believe you testified that you thought at least at
21 one isolated point in time that the instruction was being
22 given to young African-American males more than somebody a
23 little less young like yourself?

24 A Yes.

25 Q And you're not telling us that that conclusion has a

1 foundation of proper statistical analysis in terms of enough
2 statistical sampling, all that sort of thing, correct?

3 A Anecdotal from what --

4 Q Probably neither of which you and I understand.

5 A No. Anecdotal is what I observed only.

6 Q Okay. But you ultimately concluded that they weren't
7 given these instructions based on race; isn't that fair?

8 A The point -- I think the point I was trying to make was
9 it was officer-dependent. I mean there were times that I
10 stopped and I talked to African-Americans to ask them
11 questions and we were both not told to move for a minute or
12 more, and other times, I would stop simply to take a picture
13 and I was told to move, so I just -- I think my point was it
14 was just very arbitrary.

15 Q Okay. And it was not race? I think that we're both
16 thinking about your paragraph 18 of your declaration, correct?
17 Did you look at it?

18 A I'm not -- I'm not looking at it. I read it, yes,
19 absolutely.

20 Q Okay. And I'll read it to you quickly, sir. It says,
21 "The enforcement of the five-second rule seemed arbitrary to
22 me. Based on my initial observations, the rule appeared to be
23 enforced more aggressively against people of color and younger
24 people regardless of color. (I am 48 years old and white.)
25 However, I also observed the rule occasionally being enforced

1 against older people and whites (including me - see supra
2 paragraph 16). I ultimately -- I ultimately concluded that
3 the way the rule was enforced was largely dependent on which
4 law enforcement officer was enforcing it."

5 And that last sentence was your conclusion given all the
6 information you had; is that fair?

7 A Yes. And I think my point being in some officers it may
8 have been race that was their driving factor that made them
9 arbitrarily enforce it against African-Americans, and others,
10 you know, it didn't and especially when it had to do with me
11 being enforced.

12 Q And, again, this is based on a gut impression you
13 obtained; it has no statistical underpinning or anything like
14 that?

15 A My observations only.

16 Q Okay. And you testified about that the press zone got
17 moved; is that correct?

18 A Correct. That same press release.

19 Q And the old press area was right in front of the meat
20 market, is that correct, or pretty close to it, or do you
21 know?

22 A There's a number of meat markets. It's the one right --
23 it's literally at the corner. I mean it's at the corner of
24 Ferguson and Florissant.

25 Q If I represent to you there's a Ferguson Meat Market, I

1 believe, that is immediately to the south of the McDonald's,
2 does that sound right?

3 A Then that sounds correct.

4 Q Okay. And, in fact, at that time, did you notice whether
5 it had been, for lack of a better word, destroyed, ransacked,
6 or it was in some disheveled state?

7 A No, I did not notice that.

8 Q Do you ever remember seeing that over the course of time?

9 A No, none of my visits.

10 Q All right. And do you have any idea of whether, perhaps,
11 that business had closed or when it was going to reopen or
12 anything like that?

13 A I don't -- I don't know that.

14 Q Certainly, you wouldn't expect a business if it was
15 trying to reopen to have to maintain that press zone if,
16 perhaps, a better area could be found; is that correct?

17 A I mean I don't know that.

18 Q When you returned on August 21st and you indicated you
19 spoke to a number -- your declaration indicates, "I spoke to a
20 number of people in the PAZ and asked them why they were
21 there, and they said they were tired of walking."

22 A They were.

23 Q Is that correct?

24 A Correct.

25 Q All right. "I asked if any law enforcement officials had

1 directed them to the PAZ, and they responded they had found it
2 on their own." Correct?

3 A That is correct.

4 Q Is that the sum and substance of the communications you
5 remember with those folks at that location on that night?

6 A Yeah, and then I asked them what they thought of the
7 zone. That was where the woman told me that they needed a
8 porta-potty, that, you know, she had to urinate in the back of
9 the lot with her boyfriend covering her. She was the one that
10 complained that there was not the light across the street.
11 And they also complained that no one -- no one would see them
12 because they were so far away from where, you know, the press
13 and everyone else was.

14 Q Did you see any press there that exhibited any sort of
15 disability with regard to their ability to walk or move?

16 A No. They were sitting on the ground, so I really don't
17 know.

18 Q The press were sitting on the ground? Let me restate the
19 question.

20 A I'm sorry.

21 Q I'm not sure you heard it.

22 A I know.

23 Q Did you observe any press that exhibited any sort of
24 disability with regard to their ability to walk or move?

25 A Oh, no. Press, no, not that I know of.

1 MR. ISAACSON: I have nothing else, Your Honor.

2 THE COURT: Redirect?

3 MR. REHN: No, no further questions, Your Honor.

4 THE COURT: You may step down.

5 You may call your --

6 MR. SHUMAN: Your Honor --

7 THE COURT: Yes.

8 MR. SHUMAN: -- may I have a word about a scheduling
9 matter before we --

10 THE COURT: Sure. Why don't you step up to the
11 lectern and tell me what it is.

12 MR. SHUMAN: I don't think this is going to be a
13 problem because I think we'll probably have plenty of time.
14 Chief Belmar told me before we got started that he's got a
15 2:00 appointment with Senator Blunt in Clayton. That's a long
16 time from now, and I think we should be okay, but I wanted to
17 just advise you if there's a -- if it looks like we're running
18 late, if there'd be a way to accommodate him and get him on so
19 he can keep his appointment.

20 THE COURT: Okay. Well, why don't we proceed. We'll
21 take a break in a little bit, and during the break, you can
22 talk to the Plaintiff's lawyers, and if you all agree, it's no
23 problem with me.

24 MR. SHUMAN: Okay. I just wanted to advise the Court
25 of that issue now.

1 THE COURT: Right. That's fine.

2 And your next witness?

3 MR. DAVIS-DENNY: Next witness, Your Honor, is DeRay
4 Mckesson.

5 (Witness sworn.)

6 MR. DAVIS-DENNY: May I proceed, Your Honor?

7 THE COURT: You may.

8 MR. DAVIS-DENNY: Thank you.

9 THE COURT: And, again, let me make sure. You're
10 Mr. Davis-Denny?

11 MR. DAVIS-DENNY: That's correct, Your Honor.

12 THE COURT: Okay.

13 **DERAY MCKESSON,**

14 HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
15 FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. DAVIS-DENNY:

18 Q Good morning, Mr. Mckesson. How are you?

19 A I'm good. How are you?

20 Q Very good. Thank you. Could you begin by just telling
21 us where do you live and what do you do?

22 A I live in Minneapolis, the Twin Cities. I'm the Senior
23 Director of Human Capital for Minneapolis Public Schools.

24 Q And --

25 THE COURT: Can you pull yourself a little closer to

1 the mike or pull the mike a little closer to you because we
2 have trouble -- I have trouble hearing in this courtroom.

3 A Okay. Done.

4 Q (By Mr. Davis-Denny) What does it mean to be the Senior
5 Director of Human Capital for the Minneapolis Public Schools?

6 A So I manage the talent work for the district, so all
7 hiring for all positions. I manage that process and those
8 teams, and I also manage the first year professional
9 development opportunities for new teachers, so like new
10 teacher professional development on boarding.

11 Q Okay. Have you attended the protests in Ferguson?

12 A Yes.

13 Q When have you attended the protests in Ferguson?

14 A The first time I came down was Saturday, the 16th.

15 Q And --

16 A Of August.

17 Q And how long were you here for that first -- first visit?

18 A I stayed that entire week, and I left that next, like,
19 Monday night, Tuesday morning.

20 Q That would be approximately the 25th of August?

21 A Yes.

22 Q Okay. And have you returned since then?

23 A Yep. So I came back for the first Ferguson City Council
24 meeting and the County Council or the first Ferguson City
25 Council meeting and then the St. Louis City Council meeting,

1 and then I went back home, and then I came back most recently
2 this Friday.

3 Q Okay. When you attended the Ferguson protests during the
4 August time frame, where were you typically at?

5 A In August, it was mostly on Florissant, West Florissant.

6 Q And why did you attend the Ferguson protests?

7 A Yep. So I'd heard it -- I saw it on Twitter. It was
8 trending, and I was like, "Is this real?" So that morning, I
9 woke up and I was like, "You know, I think I might drive down
10 to Ferguson," and I waited a little bit until some of my
11 friends could wake up, so I could just do like a gut check to
12 just make sure I wasn't, you know, making it up. So I called
13 one of my friends, and I was like, "You know, I think I'm
14 going to go," and he was like, "I think you should go." So I
15 rented a car. I drove the nine hours to Ferguson. I put on
16 Facebook that I was coming, and some people that I knew like
17 randomly had a place for me to stay, so I stayed, and that's
18 why I came because I wanted to see if it was really happening
19 the way that it was being reported, and I was like shocked
20 that his body lay for four and a half hours. Like it just
21 seemed incredible to me.

22 MR. ISAACSON: I object to that. It's not
23 responsive. It's kind of a speech.

24 THE COURT: Overruled.

25 Q (By Mr. Davis-Denny) What did you view your role as being

1 in Ferguson when you first arrived?

2 A Yeah. So I originally came down to bear witness. Like I
3 just -- I literally wanted to see. When I got down here and
4 after the first time I got teargassed, I was like, "This is an
5 incredible -- like this is crazy," so I became a protestor.

6 Q When you were in the Ferguson protest area, did you
7 commit any acts of violence?

8 A No.

9 Q Did you break any laws that you're aware of?

10 A No.

11 Q Have you heard of a rule that police officers implemented
12 that prohibited people in the protest area from standing still
13 on sidewalks?

14 A Yes. So my understanding is that we could not stand
15 still anywhere, like sidewalks, street, anywhere.

16 Q Okay. What was your first interaction with this rule?

17 A It was on the 18th. I parked on -- I parked like towards
18 Nesbit because that was when they were starting to card people
19 who didn't live in the neighborhood, so I got there really
20 early. I parked around Nesbit. I walked towards the QT, and
21 as I was walking, I passed this woman, who was also a
22 protester, and she was like, "You know you can't stand still
23 today," and I was like, "I don't know what you're talking
24 about" because the day before I had actually stood at the
25 corner instead of going to -- and I'm going to the QT. I

1 stood and I protested with my signage. I just like stood
2 still, and then the next day, the 18th, she was like, "You
3 know you can't stand still," and I was like, "I don't know
4 what you're talking about," so I kept walking towards the QT
5 to like get on that corner so I could stand, and then four
6 officers came towards me, and they said three things. One,
7 they said, "You are walking too slow," and then he said, "You
8 can't pace the same spot," and he said, "You need to keep
9 moving." There were four of them approaching, but only one
10 spoke to me.

11 Q Okay. Could we -- Mr. Bales, could you please display
12 Exhibit 10 for us, and if you could, please cull out about the
13 top half of the page for us, please.

14 All right. Do you recognize Exhibit 10?

15 A Yes.

16 Q What is it?

17 A It's a tweet.

18 Q What's a tweet?

19 A A tweet is 140 characters that you -- you put on Twitter,
20 which is a social media platform, and I live-tweeted almost
21 all of my experiences here in Ferguson.

22 Q Okay. And who sent this tweet?

23 A I did.

24 Q How do you know that?

25 A That's my Twitter handle. It's @deray. I mean that's my

1 full name.

2 Q Okay. And when did you send the tweet that is in Exhibit
3 10?

4 A I'm sorry. I posted this at 11:52 a.m. on the 18th.

5 Q Generally, how soon after observing an event would you
6 tweet about it?

7 A Yep. So my goal was either to tweet it immediately as it
8 was happening or like immediately after it happened. So this
9 was -- I remember doing this. It was like literally after the
10 four officers stopped me because what's interesting about
11 being stopped is he also -- the officer also was like, "Your
12 sign is really nice," and then he patted me on the shoulder,
13 so my tweets after this were like, "I can't believe he touched
14 me," but -- so I remember this because I tweeted a lot about
15 this interaction.

16 Q What did you -- what did you tweet on 11:52 a.m. on
17 August 18th?

18 A So I said, "Just stopped by four troopers who told me
19 that I was walking too slowly. I cannot stop walking and
20 can't pace one spot."

21 Q Does this accurately reflect what the law enforcement
22 officers told you on the morning of August 18th?

23 A Yes.

24 Q Did the officers tell you that you could stop for up to
25 five seconds?

1 A No.

2 Q Did they tell you to disperse?

3 A No.

4 Q Did they inform you that you were part of an unlawful
5 assembly?

6 A No.

7 Q That you were violating an order to disperse?

8 A No.

9 Q That you were part of a riot?

10 A No.

11 Q Did they instruct you to leave the area?

12 A No.

13 Q Did they tell you to go protest in a designated protest
14 zone?

15 A No.

16 Q Did they inform you that there was a designated protest
17 zone?

18 A No.

19 Q Did the officers tell you how fast you had to keep
20 walking?

21 A No. Just that my current pace was too slow.

22 Q Did you ask the officers what exactly this rule allowed
23 and what it prohibited?

24 A No. No.

25 Q Why not?

1 A I don't know if you've been out to West Florissant, but
2 it's not necessarily the most -- you don't necessarily feel
3 like you can like challenge the police, ask them questions, so
4 I didn't. I was like actually like shocked because I
5 literally in the same spot had just stood the day before and
6 nobody said anything, and there were a lot of protestors out
7 there, so like nobody said anything then. So this was like a
8 really interesting one because it was the first time that I
9 had actually gotten approached by like a group of officers, so
10 that was like intimidating in its own way, but I didn't feel
11 like I like had the space to say like, "Please explain that to
12 me." Like that wasn't -- I don't know if you've been out
13 there, but that's not the vibe.

14 Q Did you observe police officers enforce this rule in a
15 consistent manner?

16 A No. It really depended on -- so West Florissant is a
17 really long -- the protest area was like pretty long. So
18 there were a lot of police officers from different places, and
19 you could tell they were from different places because like
20 you could see the different cars, like the cop cars that said
21 the jurisdictions, and it depended on where you were standing.
22 So like I can vividly remember there were some places like by
23 the -- closer to the -- like across from the QT, there's like
24 a car wash that's like sort of sunken. It's like a special
25 looking car wash, and the police there were like particularly

1 intense. So they -- like you needed to be like very on your
2 Ps and Qs when you walked by them whereas if you went like
3 further up, by like Sam's or like the Beauty Mart, like those
4 sort of things, like they -- you could stand still and nobody
5 would do anything there.

6 Q Okay. Mr. Bales, could you please display Exhibit 12 and
7 cull out the top half of the page, please.

8 Mr. Mckesson, do you recognize Exhibit 12?

9 A Yes.

10 Q What is it?

11 A A tweet.

12 Q When did you send -- who sent this tweet?

13 A I did.

14 Q And when did you send it?

15 A 4:59 on August 19th.

16 Q And what did you say in this tweet?

17 A It's a quote. "You cannot stand still. You are subject
18 to arrest." It's attributed to a police officer to media,
19 photographers, and protestors.

20 Q And is that something that you heard police officers say
21 to media, photographers, and protestors?

22 A Yes.

23 Q And how soon after observing this did you send this
24 tweet?

25 A Immediately.

1 Q And what exactly did you mean when you wrote this tweet?

2 A You know, so what was really like interesting about this
3 moment is that I like turned around, so we were -- you know,
4 we had to keep walking. I turned around and I see like a --
5 there's like the videographer, there's the -- like the
6 reporter guy, and then there's like a guy with his hand on the
7 back of the videographer, so he like doesn't get hurt. So
8 they're all walking, and they're like trying to do their
9 thing, and I like sort of bumped into the guy who was trying
10 to make sure that the videographer like didn't get -- like
11 that he didn't fall because they had to keep walking, too. So
12 I was like, "That's crazy," so I tweeted it.

13 Q When you made this tweet, I take it you were in the
14 Ferguson protest area. Is that right?

15 A Yes.

16 Q And were the media photographers committing any acts of
17 violence?

18 A No.

19 Q Were they breaking any laws?

20 A No.

21 Q And how about the protestors?

22 A No.

23 Q Mr. Bales, could you please pull up Exhibit 16 and please
24 cull out the tweet at the top of the page.

25 And do you recognize Exhibit 16?

1 A Yes.

2 Q And just to speed things up a bit, is it a tweet that you
3 sent on August 23rd at 9:39 p.m.?

4 A Yes.

5 Q And what was this tweet about?

6 A "The police make another arrest. Man was quiet on
7 sidewalk, standing still, arrested."

8 Q Did you have an understanding for why he was being
9 arrested?

10 A No. He was just standing still.

11 Q Okay. Did the police order him to disperse?

12 A No.

13 MR. ISAACSON: Your Honor, I'm going to have to
14 object to a better foundation laid as to his ability to
15 observe what had happened.

16 THE COURT: Okay. I'll sustain that. Why don't you
17 tell us a little more here.

18 Q (By Mr. Davis-Denny) Sure. Were you standing close
19 enough that you could hear the orders that the police were
20 giving to the individual?

21 A Yes.

22 Q Okay. Did you hear the police order him to disperse?

23 A So the order was that we cannot stand still because we
24 need to keep walking because you cannot stand still on West
25 Florissant.

1 THE COURT: Did you hear him say that?

2 THE WITNESS: Yes.

3 THE COURT: You heard it said to this person?

4 THE WITNESS: They said it -- he was in the crowd.

5 They said it to all of us.

6 THE COURT: Okay.

7 MR. DAVIS-DENNY: Thank you.

8 THE COURT: And then what did you see?

9 THE WITNESS: So I saw them walk over to the man and
10 arrest him. He did not -- he did not walk.

11 THE COURT: Did everybody else walk?

12 THE WITNESS: No. Some people moved. Some people
13 didn't.

14 THE COURT: Okay.

15 THE WITNESS: It was a fairly large crowd. It was
16 about 50ish people. He was one of the people not moving.

17 THE COURT: Okay. All right. Go ahead.

18 MR. DAVIS-DENNY: Thank you.

19 Q (By Mr. Davis-Denny) Did you observe him violating any
20 other laws -- the man that was arrested?

21 A No. He just -- he just did not move when the police said
22 we all needed to keep moving.

23 Q Okay. And was he acting violently?

24 A No.

25 Q Mr. Bales, could you please display Exhibit 17, and if

1 you could, please cull out the top half of the page.

2 And is this a tweet that you sent on August 23rd at
3 10:19 p.m.?

4 A Yes.

5 Q And what did you write?

6 A "So the police don't seem to" -- that's a typo; it should
7 say "seem," but again, I'm writing really quickly. "Police
8 don't seem to mind that everyone is standing still for now."

9 Q And did you send this tweet immediately after observing
10 what you are describing here?

11 A Yes.

12 Q Did the -- did you ever hear the police announce that the
13 "no standing" rule or the "keep walking" rule had been
14 abolished?

15 A No.

16 Q Okay. Mr. Bales, could you please display Exhibit 11?
17 And is this also a tweet that you sent?

18 A Yes.

19 Q And is it a tweet that you sent on -- at 11:03 on
20 August 19th?

21 A Yes.

22 Q Okay. And excuse me one second.

23 And what were you describing in this tweet?

24 A Yep. So I actually mixed up the tweets. The last tweet
25 was the photographer. This is the tweet that I meant about

1 the guy who was the reporter who was interviewing somebody,
2 holding -- where the guy was like holding the back of the
3 videographer and we were walking.

4 Q Okay. Do you think -- so the media here were also being
5 forced to keep walking?

6 A Yeah.

7 Q Did it appear to you that the media and protestors not
8 being able to stand still in the protest area hampered their
9 ability to communicate with one another?

10 A Yeah. Yes. When you are walking, you are -- like we're
11 trying not to get, you know, teargassed or anything else, so
12 you are not necessarily focusing on like talking to a reporter
13 when you like are having to keep walking, to keep walking.

14 Q And when you made this tweet, was the area around you
15 peaceful?

16 A Yes.

17 Q Was there any signs of anyone breaking any laws around
18 you?

19 A No.

20 Q Did you ever learn about an alternate protest zone that
21 had been set up?

22 A Yes. So I know that there's a -- there's -- like behind
23 the McDonald's and behind the Family Dollar and the credit
24 union, there's a furniture store, and in front of the
25 furniture store, there is a -- there's like a sign that says

1 like, "Approved -- Approved Assembly Area," I think is what it
2 says. So it's my understanding that like we could -- we
3 definitely stood on that sidewalk. Like I knew that that was
4 like a safe place where we could do, and we also could
5 assemble in the street right there. Like we never got moved
6 from being in the street right there.

7 Q What about the parking lot next to the furniture store?
8 Did you understand that you could assemble there?

9 A No.

10 Q Did a police officer ever tell you where the alternate
11 protest area was?

12 A No.

13 Q Was -- in your experience, was the alternate protest area
14 used by protestors much?

15 A Not much. There would be times where we would march all
16 the way up there, and we could -- again, we could congregate
17 in the street like adjacent to the protest area, and the
18 police like legitimately wouldn't say anything, so like by the
19 end we knew that. We also could be in -- there was like
20 another lot behind the credit union that we had gone to
21 before, and the police didn't say anything then, which is like
22 behind the Family Dollar.

23 Q Okay. And was that a designated protest zone?

24 A Not that I know. The only thing that I know is like
25 legitimately like there was a sign that said you could stand

1 here was the thing that said, "Approved Assembly Area," and
2 that was like the sidewalk, and nobody moved us when we were
3 in the street. People just didn't move us when we were in
4 that other parking lot, but it didn't have a sign that said we
5 could stand there.

6 Q So when was the most recent time you were in Ferguson?

7 A So I flew back Friday night, this Friday night.

8 Q And did you visit Ferguson this weekend?

9 A Yes.

10 Q Did you see police officers enforce a "no standing" rule
11 this weekend?

12 A Yes.

13 Q Please describe what you saw.

14 A Yep. So on Saturday -- today is Monday. On Saturday, we
15 were at the Police Department, and then we were also at
16 Faraci's Pizza. So at the Police Department, they came over
17 and told us that we needed to keep walking. He also -- there
18 was a guy in a white shirt, who I assumed to be like a
19 lieutenant or captain. He wasn't like a -- he definitely
20 wasn't a patrol officer. He came over and he told us that --
21 that they had been really lenient by not making us march
22 before at the Police Department. So he came over and told us,
23 and then they left. The Ferguson PD left. They went back
24 across the street. And then we were at Faraci's. There was
25 a -- so we were like peaceably protesting. Then a Darren

1 Wilson supporter came. That changed the mix-up a lot, and
2 they --

3 THE COURT: I'm sorry. Could you say that again?

4 THE WITNESS: A Darren Wilson supporter came.

5 THE COURT: Okay.

6 A So he -- there was like a guy in a walker. He came with
7 like a sign that said like, "I support Darren Wilson." That
8 changed the whole composition of the night. They did like an
9 all call for police to come, so more police came from other
10 places, and then they also told us that we like needed to keep
11 marching; we needed to keep moving; we couldn't stand in one
12 spot.

13 MR. DAVIS-DENNY: Mr. Bales, could you please pull up
14 Exhibit 29, please?

15 (Video played.)

16 MR. ISAACSON: Your Honor, could we have a better
17 foundation before we play this?

18 THE COURT: Yeah. Why don't you tell us what it is
19 beforehand.

20 MR. DAVIS-DENNY: Sure.

21 Q (By Mr. Davis-Denny) Mr. Mckesson, if you see the photo
22 that was up there on the screen for a second, do you recognize
23 that photo?

24 A Yes. It's a -- it's like a clip of a video I took of one
25 of the Ferguson PD.

1 Q And when did you take it?

2 A Saturday afternoon.

3 Q Which Saturday?

4 A The past Saturday. I don't know the date.

5 THE COURT: And can you tell me what this exhibit is
6 again? 29?

7 MR. DAVIS-DENNY: This is Exhibit 29, Your Honor.

8 THE COURT: Okay. And so it's a video you took this
9 past Saturday?

10 THE WITNESS: Yes, ma'am.

11 MR. DAVIS-DENNY: May we play the video, Your Honor?

12 THE COURT: Is that --

13 MR. ISAACSON: Yeah, that's fine.

14 THE COURT: Yeah, you may.

15 (Video played.)

16 Q (By Mr. Davis-Denny) Mr. Mckesson, there's a voice that
17 we hear on that video asking if there's a designated
18 free-speech zone. Do you recognize that voice?

19 A Yes. It's me.

20 Q Did you ever get an answer from this officer telling you
21 where a designated free-speech zone was at?

22 A No.

23 Q Which police departments did you see this weekend
24 involved in law enforcement efforts with respect to the
25 protest?

1 A So earlier on Saturday, people went down to the
2 license -- there's like a license building that the Mayor was
3 apparently at, so -- so when I got down there, there was a
4 Trooper. There was a State Trooper that was -- that was down
5 there alongside a Ferguson Police Department officer, so he
6 was there. During the afternoon, it was pretty much just the
7 Ferguson PD, and then sort of later, this is like the late
8 afternoon. The late afternoon into the evening, Normandy.
9 The police officer -- there was a guy from Normandy there.
10 There was a -- and then there were troopers who were there
11 also.

12 Q When you say troopers, are you referring to the Highway
13 Patrol?

14 A Whoever has like the car says "Troopers," like I'm pretty
15 sure like something that says "Troopers."

16 MR. DAVIS-DENNY: Mr. Bales, could you please put up
17 Exhibit 28?

18 THE COURT: Hold on a second. This video we just saw
19 with that police officer -- do you know what law enforcement
20 agency he was with?

21 THE WITNESS: He was a Ferguson Police Department
22 police officer.

23 THE COURT: Thank you.

24 Q (By Mr. Davis-Denny) And do you recognize Exhibit 28?

25 A Yes. This is a car that I took from my car -- this is a

1 photo I took from my car as I was leaving the license -- the
2 license building. The license building is behind me.

3 Q And when did you take this photo?

4 A Saturday afternoon. Early morning. Saturday afternoon,
5 yeah.

6 Q Okay. And is one of these vehicles what you've referred
7 to as a State Trooper vehicle?

8 A Yes. The car on the left, I believe, is a State Trooper
9 vehicle. The car on the right, I believe, is -- I think that
10 was the Ferguson PD.

11 Q Okay. And is this near where individuals were protesting
12 in Ferguson this weekend?

13 A Yeah. So this parking lot where they are is actually in
14 between the Police Department and the license building. So we
15 were -- protestors were moving from the license building and
16 going back up the street to the Ferguson PD.

17 Q Just a couple of final questions for you. How do you --
18 in your experience, how did the "no standing" or "keep
19 walking" rule affect the protestors?

20 MR. ISAACSON: I would object to this as no
21 foundation, speculative.

22 THE COURT: Overruled.

23 A So I think a couple of things. One is that it definitely
24 made us tired, so we -- you know, we had to keep walking like
25 all day. It was hot. It's still hot. It was hot yesterday.

1 So that was that. I think it was -- I think it was hard to
2 coordinate our activities because we were -- like we always
3 had to keep moving, so -- and because it was -- depending on
4 where you were whether you had to keep moving, like if you
5 were trying to say like, "Oh, we're going to march down here,
6 or we're going to go to this street," like that was sort of
7 confusing, and that was a little messy sometimes, so that was
8 tough. And then I think it was like a little -- like
9 especially with the media because they were like trying to
10 talk to you and like you're -- you know, you're trying not to
11 get like hit by something or like anything else, so they were
12 like they would be aggressively trying to talk to you and
13 interview you, which made sense because they're the media, but
14 they also had to keep walking, so like sometimes -- and there
15 were a lot of media at the very -- like, you know, the weekend
16 of the 16th, it was like anybody with a camera was in West
17 Florissant, so you're like tripping over the media and you're
18 trying to like keep moving.

19 Q (By Mr. Davis-Denny) How did being told to keep moving
20 affect your feelings towards law enforcement in the area?

21 A It was frustrating because there were -- again, there
22 were some districts that were like really intense about it,
23 right, like there were like people who were like you need
24 to -- you know, yeah, there were people that were really
25 intense about it, and then there were some that like were

1 pretty chill, so it was just weird, like you didn't know if
2 you were -- like there were people who got arrested for just
3 standing still at points, and like you didn't know if that was
4 going to be you, so, you know, you tried to -- you tried to at
5 least keep walking just a little bit, so that you could always
6 say like, "Okay. I'm like at least moving."

7 MR. DAVIS-DENNY: That's all I have. Thank you.

8 THE COURT: All right. We're going to take a
9 15-minute recess at this time. Why don't you all discuss
10 scheduling, and actually, I'll ask everybody when we come back
11 how long you think this is going to take and what our schedule
12 should be, but talk to yourselves if you think there's
13 anything we need to do out of order. We'll be in recess for
14 15 minutes.

15 (Court recessed from 10:36 a.m. until 10:53 a.m.)

16 THE COURT: What about the schedule? Can you all
17 tell me what you expect, how long you expect this to last?

18 MR. DAVIS-DENNY: Yes, Your Honor. We expect that
19 the Plaintiff's case would be done by approximately 12:30.
20 If -- and I understand from County counsel that so long as
21 they get Chief Belmar on the stand by 1:30 they think that
22 he'll be able to make his meeting, so it appears that there
23 won't be an issue currently, but if for some reason we run
24 into an issue with that timing, we're happy to let him go out
25 of order in our case.

1 THE COURT: Okay. All right. So cross-examination.

2 CROSS-EXAMINATION

3 BY MR. SHUMAN:

4 Q Hi, Mr. Mckesson. Nice to meet you.

5 A Nice to meet you as well.

6 Q You said something about there was a time that you
7 observed the police were very intense.

8 A Uh-huh.

9 Q Do you recall saying that?

10 A Yes.

11 Q At what time were you referring to?

12 A So there was a -- there was a time, like I said, in front
13 of the -- there was like a run-down car wash across the street
14 from the -- from the QT, and when you walked by those police
15 officers, they were really aggressive, so when I walked --
16 when I walked in front of those officers, I was like on the --
17 on that side, there's like a sidewalk, and then there's like a
18 stone barricade thing that like separates the street from the
19 sidewalk, and I was like in between those, so like not in the
20 street.

21 Q Forgive me because I didn't phrase the question real
22 well. What day was this event that the police were intense
23 on?

24 A There were many days that the police were intense, but
25 the moment I'm talking about would have been -- it was this

1 same day. It was the same day that we had to keep -- the
2 first time that the police had ever told me directly that I
3 had to keep walking.

4 THE COURT: Was that the 18th or the 19th?

5 THE WITNESS: It was the 18th. It was Monday, the
6 18th. 16th, 17th, 18th, yep.

7 THE COURT: Okay.

8 Q (By Mr. Shuman) Okay. What time of day?

9 A So it was -- I got there around noon because that tweet
10 that I posted was literally like right after I got out of my
11 car, so it must have been like in between noon and 2:00.

12 Q What did you mean by they were intense?

13 A So I was walking. This was what I was telling you. So
14 like I was walking. So there's a sidewalk, and then there's
15 like the streetish area, and then there's like the big stone
16 barricade, and I was walking in between the two. Like I was
17 not on the sidewalk, and the police officer yelled at me like,
18 "You need to be on the sidewalk. That's why it's there." And
19 he was just like really aggressive with it in a way that was
20 not necessarily how most of the police officers were when they
21 talked to you. The four police officers that came to me when
22 they told me I was walking too slow were relatively nice. He
23 touched me, which was weird, but they were relatively nice,
24 whereas like the officers who were across the street from the
25 QT were just like aggressive in tone.

1 Q You've described there was a large group and a guy was
2 arrested for standing still. Everybody else moved, and he
3 was -- but he stood still and was arrested. Did I say that
4 right?

5 A No. So I never said everybody else moved. I said some
6 people moved; some people stood still. He was one of the
7 people who stood still, and he was arrested.

8 Q Okay. What time of day was that?

9 A I'd have to look back at the tweet, but I believe it was
10 like midday. I believe it was midday. I don't remember. I
11 tweeted it, so that was like my timestamp. I don't
12 remember -- I don't recall what time that tweet was.

13 Q Was it nighttime or daylight?

14 A It was -- I believe it was daylight.

15 Q Were you ever there at night in Ferguson?

16 A Yes.

17 Q Let me ask you; did you ever see the whole -- how many
18 times were you in Ferguson?

19 A So I was there every night from the 16th to whatever that
20 Tuesday morning was, the next Tuesday morning, so the 20
21 something, and then I came back for the Tuesday, Wednesday,
22 Thursday of the City Council, the Ferguson City Council
23 meeting, and then the St. Louis City Council meeting, and then
24 most recently, I've been back this Friday through -- through
25 last night, and I was there for those nights.

1 Q So did you ever see any acts of violence in all the times
2 you were there in Ferguson?

3 A What would be an act of violence?

4 Q Well, it was a term that you used. You said you
5 didn't -- you had never saw any act of violence.

6 A Oh, I was responding to a question, I believe. So I --
7 I -- what I did see -- an act of violence? Well, can you give
8 me an example?

9 Q Did you see anybody throwing bottles?

10 A No.

11 Q Did you see anybody throwing anything?

12 A No, I never saw a person throw something. Like I saw
13 things in the air. Like I don't know who threw them, but I
14 did see -- like I saw -- if anything, I saw people throw tear
15 gas back.

16 Q Did you see any non-police officer do anything that would
17 be a law violation?

18 A I did see -- so there was one night where they -- we got
19 pushed from Florissant -- from all the way up West Florissant
20 to Chambers, and then we like got pushed down Chambers, and
21 that was the night that there was like a really bad car
22 accident, and like when the car accident happened, someone did
23 throw like a brick at the -- I believe it's like the
24 Dellwood --

25 Q What car scene? I don't --

1 A Huh?

2 Q You said this car scene. What did you mean?

3 A Yeah, so I'm assuming you've been to West Florissant.

4 Q Yes.

5 A Okay.

6 Q No, no. I take that back. I have not been.

7 A Okay. So West Florissant is like a really long street,
8 so like the part that people call the protest area is
9 pretty -- it's commercial. Then when you pass that, there's
10 like a sliver of residential, and then when you pass that
11 residential, there's like another huge stretch of commercial.
12 So what's interesting about this night is that they pushed us
13 like from what people call the protest area. Then we marched
14 like up the -- and by "march," I mean ran from the police as
15 they shot tear gas, and then we marched up by the residential,
16 and then we were in the area that was like the other
17 residential, where like the other car wash and like Taco Bell
18 are, and that night, the squad cars were like going up and
19 down the street, so we ran, so we got to Chambers, which is
20 like the cross-section, so like Florissant intersects with
21 Chambers right here, and we were going down Chambers. So
22 people were running down Chambers, and this is one of the
23 nights where the street wasn't blocked off, so there were like
24 a lot of cars everywhere. So there was a car accident because
25 people were speeding from what they understood to be rubber

1 bullets, and I was standing right there. So what happened --
2 like I saw this really crazy car accident where like a car was
3 speeding down, running from the police, hit another car. That
4 was really bad, and like literally when that happened, there
5 were people who were really frustrated at that, and they did
6 like throw a brick or something. Something shattered the
7 glass at the Dellwood -- I believe it's called like the
8 Dellwood Family Market or something on Chambers.

9 Q That's the only time you ever saw anybody who wasn't a
10 law enforcement officer do anything aggressive or violent?

11 A Violent and aggressive are two different things, but
12 violent, yeah. So like I saw -- I definitely saw people --
13 somebody like throw something. I don't know what they threw,
14 but like there were people. The glass broke.

15 Q On that night only?

16 A Yeah, that I like saw an actual thing that I would like
17 consider to be like violent or like unlawful.

18 Q And this past Saturday, you were at the Ferguson Police
19 Department?

20 A Uh-huh.

21 Q Okay.

22 A And last night. I was there last night as well. I was
23 there last night as well.

24 Q And I think the Judge asked you a question about the --
25 the video that displayed a police officer. You said that was

1 a Ferguson police officer?

2 A Yes.

3 Q Okay. Do you know if the City of Ferguson is a defendant
4 in this case?

5 A I do not know.

6 Q You don't know. And you saw a Normandy police officer?

7 A Yes.

8 Q Do you know if the Normandy Police is a defendant in the
9 case?

10 A I do not know.

11 Q You don't know who any of the -- well, I mean if you
12 don't know -- do you know who any of the Defendants in the
13 case are?

14 A I -- no.

15 Q Okay. I know you didn't file the suit, so that's okay.

16 A There was a State Trooper there as well. So it was
17 Normandy I saw. There were state troopers and Ferguson PD at
18 Faraci's.

19 Q Okay. But it was the Ferguson police officer that was
20 telling everybody they got to keep moving, right?

21 A No. It was all the police officers.

22 MR. DAVIS-DENNY: Object, Your Honor. Asked and
23 answered.

24 A It was all the police officers.

25 THE COURT: Overruled.

1 A I just took a video of the Ferguson police officer. All
2 the police officers that were there were telling us that we
3 needed to move. So the state troopers came, and the Normandy
4 police came in response to like somebody clearly called more
5 police to come. So they were all telling us that we needed to
6 keep moving and keeping marching. The only video I took of
7 somebody like telling me like when I was standing right there
8 was the Ferguson police officer.

9 MR. SHUMAN: Okay. That's all I want to ask. Thank
10 you.

11 THE WITNESS: Cool.

12 THE COURT: Cross-examination, Mr. Isaacson.

13 MR. ISAACSON: Yes, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. ISAACSON:

16 Q You were there every night from the time you arrived,
17 which was -- what -- August 16th through August 25th on your
18 first trip; is that fair?

19 A Yes. So the only night that I was not there as late was
20 I flew out, I believe, like very early Tuesday morning, so I
21 didn't stay out like late that night.

22 Q And you came down here, and you were missing work,
23 correct?

24 A I took vacation, yes.

25 Q Okay. And you were tweeting to how many followers?

1 A Today, I have about 7,000 followers. When I came down
2 here, I had -- when I first started tweeting, I think I had
3 like a thousand. I like tweeted this picture of J. Cole here,
4 and that like turned into a big thing.

5 Q I'll ask. Perhaps, this is an old guy question. Who is
6 J. Cole?

7 A J. Cole is a rapper. So there were a lot of people who
8 came down, but J. Cole was like the only rapper who didn't
9 like make a big publicity thing about it.

10 Q All right. Do you intend to develop something
11 professionally with your tweeting? Are you looking to develop
12 opportunities for yourself doing this?

13 A No. My career is education.

14 Q Okay. All right. And when you go in the evenings,
15 there's a lot of people there. Fair statement?

16 A Sure. A lot. I mean "a lot" is relative. Like a lot at
17 Florissant was like a couple hundred or a thousand. A lot at
18 like the PD is like 50, 60, which is what it's been most
19 recently.

20 Q Did you hear any gunfire?

21 A Gunfire? No. I heard -- I mean I heard tear gas
22 canisters being shot, and I heard what I believed to be rubber
23 bullets being shot.

24 Q But it's your testimony in any of the nights you were
25 there you never heard any gunfire?

1 A Not that I know of.

2 Q Were the noise levels high enough so that maybe it would
3 have precluded being able to hear something like that?

4 A I think I would have -- the only time that my hearing was
5 in question was there was the -- like the noise guns that do
6 like the -- that like the police use to make noise. So when
7 that started, everything -- like it was -- you know, it was --
8 that would start, and then there'd be like the smoke bomb
9 things, and then there'd be tear gas. So like when that all
10 happens, you know, questionable, but I like -- I definitely
11 heard and saw tear gas being shot, and I heard what I believed
12 to be rubber bullets being shot.

13 Q Did you see destroyed businesses?

14 A Did I see destroyed -- independent of the one that I just
15 saw -- that I just talked about -- do you want me to repeat
16 that?

17 THE COURT: No. He's asking not did you see anybody
18 destroying businesses, but did you see businesses that had
19 been destroyed?

20 A Oh, the QT.

21 Q (By Mr. Isaacson) And it was in pretty bad shape when you
22 saw it, correct?

23 A It remains in pretty bad shape, yes.

24 Q Okay. Did you see others that were destroyed?

25 A If the bar for "destroyed" is like actually like unable

1 to be accessed, only the QT.

2 Q All right. Let me use a different word. Did you see any
3 others that were damaged?

4 A Huh-uh. By the time I got there, like everything was --
5 you know, all of West Florissant was boarded up, so like I
6 don't know if it was -- there were people who put up boards to
7 prevent what they thought was going to be damage, so I don't
8 know if like it was actually damaged. Like McDonald's, for
9 example, their whole like one window was boarded up. I didn't
10 see the window broken, but I definitely saw it boarded up.
11 Does that make sense?

12 Q So you saw many businesses that were boarded up?

13 A I saw businesses boarded up, correct.

14 Q Did you see any activity from the crowd that would have
15 created -- caused the boarding up of any of these businesses?

16 A On West Florissant, no. You know, people only -- the
17 intensity of the crowd increased, you know, when everybody is
18 like running from tear gas, and there were a couple nights
19 where the -- where the street wasn't cleared, so there were
20 cars. So we were running in like all different directions,
21 and also, the tear gas was shot into the crowd. So like if I
22 was a business owner, I probably wouldn't want my window like
23 smashed out by a tear gas canister.

24 Q Or a rock or a brick or somebody kicking a window in,
25 too, right?

1 A You know, perhaps, yeah.

2 Q Yeah, yeah. Really, it doesn't matter how it happens,
3 right?

4 A Yeah, I mean, you know, I didn't see -- that question, I
5 think, like sort of seems that people were doing those things.
6 I think that like the Ferguson Burger Bar is like a great
7 example of like a business that we all went to a lot down
8 there, and it opened up the day before Mike Brown died, and
9 they've never boarded up anything. They are like legitimately
10 across the street from McDonald's, and nobody's ever done
11 anything there. That's always -- and the barber shop right
12 there as well has like always been completely open, never
13 boarded.

14 Q You indicated you saw how many arrests? How many arrests
15 did you tell us about on direct? Was it one or two?

16 A Today?

17 Q Yes.

18 A That I said? I talked about the one guy who was standing
19 still and got arrested. I saw many other arrests, but in
20 terms of talking about it today was that one guy.

21 Q That gentleman -- how -- what period of time expired from
22 the time you first saw him until he was arrested?

23 A I would say the police said we needed to keep walking.
24 Probably like no more than 10 minutes, like five, 10
25 minutes-ish.

1 Q You were looking at him for 10 minutes before he got
2 arrested?

3 A Yeah. We were all together. I mean it was like a --
4 sort of like -- have you been to West Florissant?

5 Q Yes, I have.

6 A Oh, that wasn't -- I'm not being smart. So it's a pretty
7 big street, right, so like we could -- you know, you could see
8 the crowd that you're with and the crowd across the street
9 pretty simply without having to like, you know, be right next
10 to them, so -- so yes.

11 Q And when you're with the crowd, you're engaging them,
12 correct? You're talking to people?

13 A Yeah, or I'm tweeting.

14 Q Yeah. You seem a communicative guy. You weren't
15 standing still, not talking. You were talking to different
16 people presumably, correct?

17 A Yeah, talking or tweeting.

18 Q Okay. And -- oh, all right. Now let's talk about last
19 Saturday night. Was it Saturday night -- the events you
20 talked about at the -- I -- it begins with an F. What's the
21 name of that?

22 A Faraci, the pizza place.

23 Q It is a pizza place. Okay. And that was near the
24 Ferguson Police Department, correct?

25 A "Near" is relative, but it's on the same street as the

1 Ferguson Police Department. It's like at least five blocks
2 away.

3 Q Okay.

4 A Yeah, it's not like super close but close.

5 Q Ferguson Police Department -- how far is it from where
6 the main protest area was? Let's say from the intersection of
7 Ferguson and West Florissant.

8 A Pretty far. I mean far enough. Like we could march.
9 Like we marched it before, but it's not like, you know, very
10 close. Faraci Pizza is much closer to the Ferguson PD than
11 West Florissant is.

12 Q Okay. So from the original protest area, would a mile be
13 a fair estimate to where the Ferguson Police Department was?

14 A A fair estimate? Yes.

15 Q Okay. And I think you said something to the effect
16 things changed when an individual walked in with the "I
17 support Darren Wilson" sign; is that correct?

18 A Yes.

19 Q You had an expression. What did -- do you remember what
20 you said?

21 A No.

22 Q All right. Neither do I. All right. What did you
23 mean -- what did you mean -- what did you observe change in
24 there once that individual entered that premises?

25 A Yep. So the context for Faraci's is that like earlier in

1 the weekend -- I was not here for this -- it was said that an
2 employee from Faraci pointed a gun at protesters.

3 Q Sir, I want to keep you focused on the question. I want
4 to know what you observed once that individual with the sign
5 came in. What did you --

6 A Yeah. So he came over. He was in a walker. He had a
7 big sign that said like, "I support Darren Wilson," and he --
8 he was like -- he called us chicken shits, and he did some
9 other stuff.

10 Q I'm sorry, sir. Could you keep your voice up? I lost
11 you there.

12 A Yeah. So he called us chicken shits, and then he -- he
13 like marched in front of the -- he was like right in front of
14 the protestors, and then he pushed his walker into two -- into
15 two female protestors, and then that created sort of a moment.
16 So there was this call from the protestors to arrest him, and
17 the police eventually did, but while they were -- while he was
18 right there and there was like this sort of standoff where he
19 pushed his walker into two protestors, they said, "Police, you
20 need to arrest him." The police officers -- and I saw them
21 like make a call for other police officers to come.

22 Q Okay. So there was a physical altercation?

23 A The support -- the Darren Wilson supporter did push his
24 walker into protestors. I think an altercation applies if
25 like both people did something, and like there was no response

1 from the protestors. Physical response.

2 MR. ISAACSON: I don't have anything else, Your
3 Honor.

4 THE COURT: Any redirect?

5 MR. DAVIS-DENNY: Just a couple of questions, Your
6 Honor.

7 REDIRECT EXAMINATION

8 BY MR. DAVIS-DENNY:

9 Q Mr. Mckesson, you were -- you were asked a number of
10 questions about incidents at night. Did -- was the rule ever
11 enforced against you -- the "no standing" rule that we've been
12 talking about -- during the daytime?

13 A Yes.

14 Q Okay. And did you ever observe any acts of violence
15 during the daytime?

16 A No.

17 Q Okay. You were also -- I also wanted to just clarify;
18 even at night, were the majority of protestors peaceful,
19 violent, or something else?

20 A Very peaceful. Peaceful.

21 Q Peaceful. Okay.

22 MR. DAVIS-DENNY: Your Honor, that's all I have with
23 this witness. I did neglect to ask Your Honor to admit
24 Exhibits 10, 12, 11, 16, 17, and 29 and would ask that they be
25 so admitted now.

1 THE COURT: All right. They are received into
2 evidence.

3 You may step down.

4 You may call your next witness. Oh, sorry.

5 MR. ISAACSON: Question. You're not -- you're not
6 putting in 27?

7 THE COURT: I believe 27 is already in. Isn't that
8 the map?

9 MR. ISAACSON: No.

10 THE COURT: Oh, okay.

11 MR. ISAACSON: Then I misunderstood. There was a
12 video of the individual, a Ferguson police officer. Which one
13 was that?

14 MR. DAVIS-DENNY: 29.

15 MR. ISAACSON: Okay.

16 MR. DAVIS-DENNY: I'm sorry. If I misspoke, I meant
17 Exhibit 29.

18 MR. ISAACSON: I had that as 27. That could have
19 been my error.

20 THE COURT: Okay. 29. Now what about 28? That was
21 the photograph of the cars.

22 MR. DAVIS-DENNY: Thank you, Your Honor. Exhibit 28
23 as well.

24 THE COURT: Okay.

25 MR. ISAACSON: I would like to make an objection with

1 regard to 29.

2 THE COURT: Okay. Why don't you step up to the
3 lectern, so I can hear it.

4 THE WITNESS: Am I staying here?

5 THE COURT: No. You can step down. You're done.

6 MR. ISAACSON: As I don't see how it is relevant. It
7 depicts a nonparty explaining an incident, a policy that
8 applied to a situation that we've heard is about a mile away
9 from what we're here about today. We don't know. There's no
10 foundation that that individual had any authority to speak
11 even on behalf of Ferguson Police Department or his basis for
12 knowledge of what he was saying, much less the parties in the
13 case, so I don't think 29 should be admitted, Your Honor.

14 THE COURT: Okay. That objection is overruled, and I
15 will receive all of those into evidence, including 29 and 28.
16 I think those are arguments that are appropriate for you to
17 make at the appropriate time, but I'm going to receive the
18 evidence.

19 All right. Your next witness.

20 MR. DAVIS-DENNY: Our next witness, Your Honor, is
21 Plaintiff Mustafa Abdullah.

22 THE COURT: All right. Sir, would you step right
23 here to the clerk to be sworn?

24 (Witness sworn.)

25 MR. DAVIS-DENNY: And, Your Honor, before I begin

1 with Mr. Abdullah, I had an issue I wanted to raise that I
2 think could help with scheduling.

3 THE COURT: All right. Speak up. I have trouble
4 hearing.

5 MR. DAVIS-DENNY: Oh, sorry.

6 THE COURT: I'm trying to make that clear. Can you
7 tell the difference when your voice is picked up on the mike
8 and when it's not?

9 MR. DAVIS-DENNY: I do now, yes, Your Honor.

10 THE COURT: Okay. Thank you.

11 MR. DAVIS-DENNY: Yes. It may be a conversation
12 that's more appropriately had at sidebar. I'm not sure where
13 Your Honor would prefer to have it, but it's a question
14 about --

15 THE COURT: Why would it be sidebar?

16 MR. DAVIS-DENNY: Maybe I should just tell Your Honor
17 what the question is --

18 THE COURT: Yeah.

19 MR. DAVIS-DENNY: -- and you could let me know what
20 you prefer. The question is whether, since this is a
21 preliminary injunction hearing, his declaration can suffice
22 such that I don't need to repeat points that are already made
23 in his declaration. They will, of course, be appropriate
24 topics for cross-examination, but if Your Honor --

25 THE COURT: It's your hearing. You can do it however

1 you want.

2 MR. DAVIS-DENNY: Okay.

3 MUSTAFA ABDULLAH,

4 HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
5 FOLLOWS:

6 DIRECT EXAMINATION

7 BY MR. DAVIS-DENNY:

8 Q Good morning, Mr. Abdullah.

9 A Good morning.

10 Q Could you please just remind us very briefly where it is
11 you work and what it is you do?

12 A So I work for the ACLU of Missouri. My title is Program
13 Associate. Essentially, what I do is I do advocacy and
14 organizing work for the ACLU. That includes a whole gamut of
15 things, including, you know, our legislative work to
16 organizing local coalitions to doing, you know, like "know
17 your rights" workshops in the community.

18 Q Okay. As the Court heard last time that you testified
19 here, I believe your work has taken you to the Ferguson
20 protest area; is that correct?

21 A Correct.

22 Q Generally speaking, what have you been doing in Ferguson?

23 A So my primary role has been to be distributing "know your
24 rights" cards and to be notifying protestors of what their
25 rights are. Also, I've been serving in a sort of legal

1 observer capacity, and I've been really trying to connect with
2 the people in Ferguson to sort of hear their stories and what
3 are the problems that they're facing, what are the hopes that
4 they have for their community, so that's what I've been doing.

5 Q Do you have any communications with law enforcement
6 officers in Ferguson?

7 A Yes. On -- on the street, I did.

8 Q Why? What were you talking with them about?

9 A Well, initial -- my initial interactions with law
10 enforcement were when I was being informed about the
11 five-second rule. I was, you know, standing on the sidewalk,
12 and I was told I couldn't be standing for more than five
13 seconds, and that was my initial interaction.

14 Q You mentioned a legal observer role with respect to your
15 time in Ferguson. Can you elaborate on that? What was your
16 role?

17 A Yeah. So, you know, I was just trying to, you know,
18 ensure that the rights of people were being protected but also
19 to try to, you know, establish some communication with -- with
20 law enforcement. I mean I think there's a lot of lack of
21 communication, a lot of lack of clarity about the directive
22 that folks on the ground are being given. You know, I sort of
23 in some ways see myself as being a bridge builder. If there's
24 a -- an order that's being given by law enforcement, I'm not
25 encouraging folks to -- to not abide by that order. I'm

1 trying to be respectful towards the orders even if we may
2 think that they may be problematic.

3 Q Have you ever engaged in any acts of violence in
4 Ferguson?

5 A No.

6 Q Have you ever committed any unlawful acts to the best of
7 your knowledge in Ferguson?

8 A No.

9 Q Did you engage -- encourage others to engage in violence
10 or unlawful acts?

11 A Absolutely not.

12 Q Last time we heard -- you were here. The Court heard
13 mainly about your experiences on Monday, August 18th, with the
14 five-second rule. Was that the first time you went to
15 Ferguson?

16 A That was not the first time I went to Ferguson. The
17 first time I went to Ferguson was the evening of Thursday,
18 August 14th.

19 Q Were protestors being instructed to keep moving or to not
20 stand for longer than five seconds on August 14th based on
21 what you saw?

22 A No.

23 Q So what were you doing there in Ferguson that night?

24 A I was distributing "know your rights" information, again,
25 just trying to build a conversation with -- with -- with

1 protestors. It was actually quite a beautiful sight that
2 Thursday night. There were a lot of people out there. You
3 know, there were people that were playing music, that were,
4 you know, singing. There were people that were barbecuing. I
5 mean it was like a real big, big party, and so it was a
6 really -- it was a really wonderful community building
7 opportunity. Law enforcement appeared to be very, very
8 professional. It was just everything was wonderful that
9 night.

10 Q Mr. Bales, could you please display Exhibit 25.

11 Mr. Abdullah, do you recognize Exhibit 25?

12 A Yes.

13 Q Could you please describe for us what it is?

14 A Yeah. So it's a -- it's our ACLU of Missouri "know your
15 rights" card. It just, you know, provides guidance to people
16 on how they should be interacting with law enforcement.

17 Q Does this card have anything to do with your visit to
18 Ferguson on the night of August 14th?

19 A Yes. I was --

20 Q How is that?

21 A I was distributing these, these cards. I think -- you
22 know, I think we had distributed probably several hundred,
23 maybe in the ballpark of 400. We distributed a lot of cards
24 that night.

25 Q Okay. Now, the following week, you experienced the

1 five-second rule, correct?

2 A Correct.

3 Q Was it easier to share your message, these "know your
4 rights" cards on August 14th or the following week, or were
5 they roughly the same?

6 A It was much easier on August the 14th. On -- the reason
7 that I say that is because, you know, I was usually talking to
8 at least multiple people at a time. Sometimes -- I think
9 maybe my largest group was like eight or 10 folks that I was
10 talking to, and so it was just -- it was very easy to share
11 this material with a larger group of folks, to get that
12 information out more effectively, but it was also, you know, a
13 relationship building opportunity, and -- and I was also just
14 trying to -- trying to give folks directive about, you know,
15 how they can responsibly interact with law enforcement and
16 not -- you know, encouraging them to not violate the law or
17 not violate their orders.

18 Q I appreciate that you were sharing information with the
19 protestors on that night of August 14th. Were they sharing
20 any information with you?

21 A Yes, yes.

22 Q Describe please.

23 A Yeah. So I mean, you know, I was asking them about the
24 problems that they face in their community. So there were
25 instances, stories that were shared around to what they

1 perceived to be racial profiling, issues of excessive force,
2 but there were also issues that they talked about in terms of
3 like having a lack of quality after-school programs at their
4 public schools, the lack of job training opportunities. There
5 were a whole slew of issues that they talked about.

6 Q Okay. Well, let's -- let's skip then to August 18th, and
7 you've testified about that before, and it's addressed in your
8 declaration, so I don't want to go through each one of the
9 incidents in detail again, but you saw a video earlier this
10 morning that was Exhibit 2. Do you recall Exhibit 2 --

11 A Yes.

12 Q -- which one that is, so we don't have to play it over
13 again?

14 A Yes.

15 Q Okay. What is going on in Exhibit 2, just to remind us?

16 A Yes. So there was a -- there's a pastor, and there was
17 an activist who I was congregating with. The pastor asked for
18 us to pray with him, and, you know, I'm personally a man of
19 faith, and when a pastor asks me to join him in prayer, I'm --
20 I'm not going to refuse that.

21 Q Okay. Were you moving when you were praying?

22 A No, no.

23 Q What did the officers who we saw on Exhibit 2 say to you
24 when they approached?

25 A They -- they said, "Oh, we told you already you can't be

1 standing for more than five seconds," and immediately when --
2 and I was threatened with arrest, and immediately when they --
3 when they came up, as is shown in the video, I was sort of
4 walking backwards away from them towards -- towards the
5 McDonald's.

6 Q Looking at that video this morning, do you recall how you
7 felt after the officers approached you and told you to keep
8 moving?

9 A Yeah. I was -- I was very timid, and I was nervous.
10 I -- I don't want to -- to get arrested, so I was trying to --
11 to not do that.

12 Q Of course, none of us are probably interested in getting
13 arrested, but is there any particular reason why that's
14 important to you?

15 A Well, again, I sort of -- in the ongoing events in
16 Ferguson, I see my role as -- as being one of trying to be a
17 bridge builder. You know, I think it's -- there's a lot of
18 high tension that's going on in Ferguson, a lot of high
19 feelings, a lot of high emotions from multiple parties, but
20 also, you know, particularly between the law enforcement
21 and -- and the people who are protesting. I'm very concerned
22 about the safety of -- of all people, and so, you know, I --
23 again, like I said, I've been encouraging people to -- to do
24 their best to not violate any orders. I've been encouraging
25 people to try to be acting responsibly and to -- to not be

1 doing anything that could up the ante. I think the -- I know
2 the reason that there's tension is that there's a lack of
3 clear communication that I've witnessed -- clear and
4 consistent, I should say --

5 Q Okay.

6 A -- from law enforcement, so that's, you know, a lot of
7 communication -- or confusion.

8 Q Just for the avoidance of doubt, when you were praying,
9 were you engaged in any acts of violence or other unlawful
10 activity?

11 A No.

12 Q Okay. That order that we saw in Exhibit 2 to keep
13 moving, how did that compare to other orders that you received
14 that day?

15 A Well, so there was one order that I had received where I
16 was walking with a reporter from the St. Louis Post-Dispatch
17 near the -- in front of the Public Storage business area,
18 going towards the broken-down car -- car wash facility, and
19 there was -- I believe it was a group of three officers,
20 and --

21 Q And what did they tell you?

22 A They told me, you know, "Where are you -- where are you
23 going? You know, we told you" -- you know, it was like,
24 "Where are you going?" And I said, "Well, I thought I
25 could -- I thought I just shouldn't be standing for more than

1 five seconds," and, you know, they -- they -- they said that I
2 needed to keep on -- to keep on moving, and it was unclear to
3 me because I was walking, but I was walking back and forth on
4 the -- on that strip.

5 Q Did you understand after your interactions with the
6 officers on -- on August 18th what the rule prohibited you
7 from doing and what it allowed you to do?

8 A There was a lot of lack of clarity. I did, you know,
9 understand that I was not supposed to be standing for more
10 than five seconds. It was unclear about where I would be
11 allowed to walk, though, or where I should be walking to.

12 Q Did the different ways in which the rule was described to
13 you have any ability on your -- have any impact on your
14 ability to communicate with others?

15 A Oh, yes, absolutely.

16 Q How so?

17 A Well, as I mentioned, on August 14th, you know, I was
18 talking to larger groups of folks at the same time. You know,
19 this -- I mean I -- I have a lot of meetings, and I've never
20 had a walking meeting. All right. Like when I'm trying to
21 build relationships with people and build a sense of trust,
22 it's sitting down at a table or it's at least, you know,
23 looking at each other and directly communicating. I also
24 just -- I was having in the back of my mind a concern about
25 getting arrested. I was -- you know, I had a number of

1 concerns going on in the back of my head because of the orders
2 that were being given, so . . .

3 Q Okay. On any of the occasions on August 18th where you
4 were instructed to keep moving or not to stand still for more
5 than five seconds or to, you know, get along to where you were
6 going, were you engaged in any violent or unlawful activities?

7 A No.

8 Q Were others that you were with engaged in any other --
9 any unlawful or violent activities?

10 A No.

11 Q Were you planning any unlawful or violent activities?

12 A Absolutely not.

13 Q Did you ever witness violent activity in Ferguson during
14 daylight hours?

15 A No.

16 Q And was the rule applied to you during daylight hours?

17 A The rule was -- was applied to me during daylight hours
18 on August the 18th.

19 Q Did this rule appear to you to have any impact on
20 tensions between law enforcement officers and protestors?

21 MR. ISAACSON: Let me just object as I believe it
22 calls for complete speculation.

23 THE COURT: Overruled.

24 A Yes, it did.

25 Q (By Mr. Davis-Denny) In what way?

1 A Well, I talked with -- I was out there for about an hour
2 on that -- on that morning, and I did talk with a number of
3 media persons and protestors, all of whom were -- had shared
4 stories around their experience that morning with the
5 enforcement of these orders. They were -- they were confused.
6 It seemed to them to be arbitrary, and -- and so I -- you
7 know, again, I was encouraging them to follow the orders but
8 if they feel like their rights may have been violated, that --
9 you know, that that's something that we can address later but
10 to be respectful and to honor the orders.

11 Q When was the last time you were in Ferguson?

12 A The last time I was in Ferguson was Saturday.

13 Q Okay. Did you see protestors that night in Ferguson?

14 A Yes.

15 MR. ISAACSON: Could I just have -- Saturday the --

16 MR. DAVIS-DENNY: Oh, I'm sorry.

17 THE WITNESS: This past Saturday.

18 MR. ISAACSON: Okay.

19 Q (By Mr. Davis-Denny) Did you speak with the protestors on
20 Saturday, this last Saturday in Ferguson?

21 A Yes.

22 Q How would you describe the relationship between
23 protestors and law enforcement as of this last Saturday?

24 MR. ISAACSON: I object.

25 THE COURT: Well, the ones you talked to, right?

1 MR. DAVIS-DENNY: That's correct, Your Honor. Thank
2 you.

3 THE COURT: And I'll overrule the objection. He can
4 say what he thought it was between the ones he talked to. Go
5 ahead.

6 A Yeah. So, yeah, we -- I would say that, you know, we
7 talked to several dozen protestors. It was a very -- it was
8 very tense, and I think, you know, it's very tense partly
9 because there's a lack of communication about, you know, where
10 they can be protesting, what -- you know, and so we
11 actually -- I had been called out by my boss, Jeffrey Mittman,
12 to come join him just outside of the Ferguson Police
13 Department Saturday evening. So I went with a bunch of -- a
14 lot of "know your rights" cards, and, you know, Jeffrey and I
15 were engaging with a large group of folks there, educating
16 them on what their rights are and then, again, same thing,
17 sort of encouraging them to be responsible, to be honoring the
18 orders of law enforcement but to -- to sort of let us know if
19 there were any concerns or problems that they encountered that
20 they, you know, wanted to review.

21 Q (By Mr. Davis-Denny) Okay. Have you seen any sign that
22 the Highway Patrol or the County have repudiated this rule
23 that you were subjected to?

24 A No, I have not seen that.

25 Q Are there any upcoming events that you're involved with

1 organizing with respect to the Ferguson protests?

2 A Yes.

3 Q Could you describe that for us?

4 A Yes. So on Saturday, October 11th, the local "Don't
5 Shoot" Coalition and the national "Hands Up" Coalition are
6 organizing a "Justice for All" Rally and March on -- for early
7 in the day on Saturday, October the 11th. It will be taking
8 place here, downtown, around the corner, hopefully.

9 Q Okay. Do you know how many are expected to attend the
10 event?

11 A In the thousands.

12 Q And is it expected that there will be events in Ferguson
13 as well?

14 A Possibly. This is -- you know, this is the only event
15 that I'm intimately a part of organizing. You know, we are in
16 the process of getting permits for that and coordinating with
17 the City. It's a very large coalition, so I -- I'm not privy
18 to the details of other events that may be organized.

19 Q Okay. If there are major events in Ferguson that
20 weekend, do you expect that you will attend?

21 A Yeah. I mean my major role in -- in -- in helping to
22 organize that march and rally on Saturday is to ensure that
23 we're fully complying with the legal process for applying for
24 permits and to ensure that we have enough legal observers out
25 there for the march to -- you know, to, again, educate people

1 on their rights, to establish relationships with the law
2 enforcement there, to try to negotiate, you know, deal with
3 any problems. We will also have crowd marshals there as well
4 who will be focused on controlling the crowd.

5 Q Do you have any concerns about going back to Ferguson?

6 A Yes.

7 Q What are they?

8 A Well, I'm always -- I'm always concerned about -- about
9 the possibility of getting arrested when I don't want to. You
10 know, I'm -- you know, I'm just -- I'm concerned about --
11 about the tensions and the safety in the community.

12 Q Okay. Has -- in your experience, has the five-second
13 rule helped to lessen tensions?

14 MR. ISAACSON: I'm going to have to object. This is
15 speculative, Your Honor.

16 THE COURT: You know, I'm going to overrule it just
17 because I suspect other people may be giving similar opinions.
18 I'll give it what weight I think it's worth once I've heard
19 all the evidence.

20 A Yeah. I mean I can't even remember how many people I've
21 talked to or engaged with, but, yes, it has. I think it's
22 more broadly just what appears to be an arbitrary enforcement
23 of the rule. People are just like, "I can stand on -- you
24 know, I can stand here, or I can stand there, or it's being
25 enforced at this time and not at this time." So I think it's

1 led to a lot of confusion.

2 THE COURT: Well, the question was actually --

3 MR. DAVIS-DENNY: Yes.

4 THE COURT: -- do you think it's lessened tensions --

5 MR. DAVIS-DENNY: Thank you, Your Honor.

6 THE COURT: -- and you said, yes, you think it
7 lessened tensions.

8 A Oh, sorry, sorry. It's increased the tensions.

9 THE COURT: I probably shouldn't help you out that
10 way, but --

11 MR. DAVIS-DENNY: I appreciate it, Your Honor.

12 A My apologies. It has increased the tensions, yes.

13 MR. DAVIS-DENNY: Thank you, Mr. Abdullah. That's
14 all I have.

15 THE COURT: Cross-examination.

16 CROSS-EXAMINATION

17 BY MR. SHUMAN:

18 Q Hi, Mr. Abdullah.

19 A Hi.

20 Q I want to understand about this five-second rule. How --
21 where does that name come from?

22 A I think it's just been dubbed the five-second rule
23 because, you know, when I was told that I couldn't be
24 standing, I asked for an explanation of it, and they said,
25 "Well, you can't be standing for more than five seconds."

1 Q Who is "they"?

2 A It was a St. Louis -- I believe it was a St. Louis County
3 Police officer. It was a brown uniform.

4 Q Okay. Did he say -- did this County police officer
5 explain that this was a general County rule, or was it just
6 something that he was saying?

7 A He didn't provide much explanation for the rule.

8 Q So you don't know where it came from?

9 A Well, in the first incident, I -- that was not made clear
10 to me. It was in the fourth incident on that day of Tuesday,
11 August 14th, where -- where I was, you know, praying with the
12 pastor as depicted in the evidence, that the -- the officers
13 were asked -- I believe it was by the activist -- "Who has
14 given you this order?" And the officers then said, "Well, our
15 authorities. This comes from our authorities." So that's
16 what I heard.

17 Q And I thought you said that on the 14th it was easier to
18 share your message of handing out the "know your rights" cards
19 than it was later on.

20 A My apologies. The incident I was just speaking of was on
21 Tuesday, August 18th, but Thursday, August 14th, yes, it was
22 much easier to share the message.

23 Q Did you share the message on the 18th?

24 A I did share the message with -- you know, with a handful
25 of people.

1 Q Did you hand out the cards?

2 A I did hand out cards, yes.

3 Q Did you come home with any cards?

4 A I did come home with cards. We have lots of cards.

5 Q Okay. You didn't expect to run out?

6 A That didn't really -- I don't know what I was thinking
7 about at that time. Yeah.

8 Q You handed out as many as you could, though, right?

9 A On -- on Tuesday, I would have liked to have stuck around
10 longer if I felt like I was in a safe position to do so.

11 Q Why weren't you safe?

12 A Well, because I had been threatened with arrest five
13 times within an hour, and I just -- I didn't want to -- to
14 risk getting arrested. That was not in my interest.

15 Q And I thought you said that there was a point where you
16 spoke with media and with other protestors who were all
17 confused about what they could do.

18 A Correct.

19 Q And how did you know that?

20 A Well, because I was engaging with them. I was -- I was
21 talking with them.

22 Q How many people do you think you engaged with?

23 THE COURT: Okay. And which day are we talking
24 about? Are we still on Tuesday, the 18th?

25 A I believe that we are talking --

1 MR. ISAACSON: Just for the record, I think Monday
2 was the 18th, right?

3 MR. DAVIS-DENNY: That's correct.

4 MR. ISAACSON: We can all agree?

5 THE WITNESS: Sorry. Yes. This was August 18th.
6 That was the Monday. Sorry. The date was Monday,
7 August 18th.

8 THE COURT: Okay. So that's the day we're talking
9 about?

10 THE WITNESS: Correct.

11 Q (By Mr. Shuman) Was this the day that you said that --
12 Monday the 18th -- was that the day that you were -- you spoke
13 with media and protestors and they told you they were confused
14 about what they could do?

15 A Correct, yes, sir.

16 Q Okay. And about how many individuals did you speak with?

17 A It may have been maybe 15 people or so, 15 to 20 people.

18 Q Did you encourage them to do anything?

19 A No. Well, I encouraged them to -- to be respectful to
20 the officers, to be, you know, responsive to their orders, but
21 also that, you know, if they were experiencing this
22 five-second rule, that I was very concerned about that, and if
23 they felt like any of their other free-speech rights were
24 being violated, that they should -- that they should contact
25 our organization.

1 Q And you can't know whether they -- ultimately an
2 individual was respectful, but you know that you gave them
3 that advice to be that way?

4 A Oh, absolutely. I'm not -- I'm not -- I can't -- you
5 know, I can't vouch for all of their subsequent actions.

6 Q So where did you meet with them? In your office?

7 A Where did I meet with whom?

8 Q When you were talking to the media and the protestors and
9 gave them this advice, did they come to your office to talk
10 about it?

11 A No, none of them came to talk to -- to me. I'm not sure
12 if -- if anybody else --

13 Q So where were these conversations taking place?

14 A They are taking place on the sidewalk on West Florissant,
15 mostly between that car wash and the McDonald's.

16 Q Okay. And you and Mr. Mitten went to the Ferguson Police
17 Department this past Saturday night?

18 A Correct.

19 Q And handed out "know your rights" cards?

20 A Correct.

21 Q And you gave advice to everyone there about how to
22 behave?

23 A Correct.

24 Q Did you run out of people to talk to?

25 A Oh, I -- there were a lot of people to talk to that

1 night. You know, we -- mostly led by Mr. Mittman. He gave
2 sort of a brief one-on-one "know your rights" presentation to
3 a lot of the protestors there, and I went around to a lot of
4 the individual protestors and was handing out cards and
5 having, you know, conversations with them about their rights,
6 what was going on, and all sort of related subjects.

7 MR. SHUMAN: Well, thank you, Mr. Abdullah. That
8 will be all.

9 THE WITNESS: Thank you.

10 THE COURT: Cross-examination, Mr. Isaacson.

11 CROSS-EXAMINATION

12 BY MR. ISAACSON:

13 Q Sir, your objective in going to Ferguson was to promote
14 and protect the rights of peaceful demonstrators, correct?

15 A That was one.

16 Q Okay.

17 A That was one objective.

18 Q All right. Your job and task was not really to monitor
19 the crowds to prevent violence or destruction of property,
20 correct?

21 A That's not a primary role, but I was -- I was dis -- I
22 was -- I'm actively discouraging, but, yeah.

23 Q All right. Not your primary focus?

24 A Exactly.

25 Q All right. And as part of your duties, you were

1 distributing "know your rights" cards to people?

2 A Correct.

3 Q And part of what you're doing is you're engaging them,
4 correct? You want to talk to them. You want them to talk to
5 you. You're trying to get information. You're trying to give
6 information. Is that fair?

7 A Yeah, yeah.

8 Q Okay. So your role there is to really get to people and
9 kind of get a dialogue going; is that --

10 A Yeah.

11 Q -- fair? All right. And I believe, in looking at your
12 declaration, it appears you only observed the implementation
13 of anything approaching a five-second rule or anything like
14 that the night of August 18th, on Monday; is that correct?

15 A Well, so it was between 11:00 a.m. and 12:00 p.m. on
16 Monday, August 18th.

17 Q So we might have leaked over into the morning of Tuesday.
18 Is that fair? Is that what you're saying?

19 A I don't -- I don't -- I can't say anything personally
20 about Tuesday.

21 Q Okay. But that's the only time you saw this policy,
22 strategy, or whatever implemented; is that fair?

23 A Personally, yes.

24 Q Okay. Do you have a disability with regard to being able
25 to walk?

1 A No.

2 Q All right. So asking you to walk presumably would not
3 prevent you from communicating with people; is that fair?

4 A It wouldn't prevent me, but it -- it does limit the kind
5 of fruitful discussion that you can have because the -- as I
6 said, when you're walking on that sidewalk, you're constantly
7 thinking about whether you're going to be harassed by law
8 enforcement. As I said, in the second incident, I was walking
9 and law enforcement came up to me -- three officers -- and,
10 you know, they said, "Where are you going?" And it was sort
11 of, you know, intimidating, and so I was think -- I had that
12 in the back of my mind.

13 Q But that's different than having to walk and talk with
14 somebody. You can walk and talk with somebody and have a
15 rich, productive conversation. You're not telling us
16 otherwise, are you?

17 A I would think it would be difficult in that context.

18 Q Really?

19 A Yeah.

20 Q Did you walk the halls in high school? Did you talk to
21 your friends?

22 A Well, the -- so I think the context in high school is
23 very different from a context in which you're being told that
24 you can't -- that you can't stand for more than five seconds
25 and then you can't be walking in a particular -- I don't know.

1 I didn't know where I could walk or where I couldn't.

2 Q And maybe I'm not being particular enough with my
3 question. Just the mere act of having to walk and talk with
4 somebody does not make it more difficult; it was more being in
5 this environment; is that fair?

6 A Oh, absolutely, yes.

7 Q Okay. All right. Did you observe any significant
8 numbers of press that appeared to have a disability with
9 regard to walking?

10 A No.

11 Q Do you recall any significant numbers of people out there
12 that had a disability with regard to walking?

13 A Not -- not that -- I mean I don't know. I mean based
14 on --

15 Q I'm asking what you observed.

16 A Sure, but, you know, based on what I could see, there
17 were, you know, maybe a few folks, but --

18 Q Certainly not numerous enough to merit entry into your
19 declaration; is that correct?

20 A That's correct.

21 Q Okay. Now, you can walk and pray at the same time, can't
22 you?

23 A You can. It makes it more difficult; that's for sure.
24 You're not focusing on the prayer. You're focusing on walking
25 and praying.

1 Q Okay.

2 A My caveat to that would be if I'm having to walk I
3 would -- even in a safe scenario -- that I would have to be
4 looking at the steps in front of me whereas if I'm standing
5 stationary then I'm not going to have to be looking where I'm
6 walking.

7 Q You're capable of doing that, though?

8 A I'm capable of doing that, yeah.

9 Q Yeah. Pretty easy -- a young guy like you?

10 A Yeah.

11 Q All right. Last Saturday night's events occurred at the
12 Ferguson Police Department, correct?

13 A Right, just outside. We were standing in the parking lot
14 that's just opposite the Ferguson Police Department.

15 THE COURT: And what time were you there on Saturday
16 approximately?

17 THE WITNESS: I think I went out about 7:30, and I
18 think we were there until a little bit after 9:00 maybe.

19 Q (By Mr. Isaacson) And you saw a significant crowd there
20 that night?

21 A Yeah, yeah. I would -- I would estimate probably about
22 60 people or so.

23 Q Okay. Now, the numbers -- when you were between, you
24 know, let's say, Ferguson and West Florissant and then the QT
25 as you went north, those numbers were a lot more than that,

1 correct, on a nightly basis?

2 A Well, so the -- on the August 18th incident, there were
3 only a handful of people that were out there. There weren't a
4 whole lot of people.

5 Q You know, and maybe I probably -- were you even there
6 that night?

7 A On which night?

8 Q The night of Monday, August 18th, going into that Tuesday
9 morning.

10 A I do not believe I was there. No, I don't think so. No.

11 MR. ISAACSON: All right. Yeah, I -- okay. I don't
12 have anything else. Thank you.

13 THE WITNESS: Okay.

14 THE COURT: Redirect.

15 MR. DAVIS-DENNY: Just clarify a couple of things,
16 Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. DAVIS-DENNY:

19 Q This last Saturday night, when you were across from the
20 Ferguson Police Department station and you were able to hand
21 out the "know your rights" cards, were they enforcing a "no
22 walking" rule at that time? Did you observe them enforcing a
23 "no walking" rule?

24 A They -- they --

25 THE COURT: No walking or no standing still?

1 MR. DAVIS-DENNY: I'm sorry, Your Honor.

2 Q (By Mr. Davis-Denny) Were they enforcing a "no standing
3 still" rule?

4 A There were no officers that I saw, you know, coming to
5 approach us. Yeah, so that didn't happen.

6 Q Okay. You were asked a number of --

7 THE COURT: You didn't see any at all?

8 THE WITNESS: Well, there were officers that got into
9 their vehicles, and they were driving off to emergency
10 situations that I saw, but there were no officers during that
11 time that came over to the parking lot where we were.

12 THE COURT: Okay.

13 Q (By Mr. Davis-Denny) You were asked a number of questions
14 about whether you can walk and talk at the same time.

15 A Yes.

16 Q And I just wanted to ask; did the rule on August 18th
17 that you experienced -- did it have any impact on the number
18 of people that you were able to communicate with at one time?

19 A Yes, absolutely.

20 Q Why?

21 A Well, I mean, you know, when you're standing stationary,
22 you can sort of build an audience. When you're walking, that
23 becomes a lot more -- a lot more challenging unless the
24 audience is going to be like marching with you or something.
25 So, yeah, it made it a lot more difficult.

1 MR. DAVIS-DENNY: Okay. That's all I have. Thank
2 you.

3 THE COURT: Anything further?

4 All right. You may step down.

5 You may call your next witness.

6 MS. DEGTYAREVA: Your Honor, the Plaintiff would like
7 to call Joel Reinstein.

8 THE COURT: Counsel, I think we should take -- I
9 don't know if you want to do this now. I want to take some
10 kind of a lunch recess. So what time does the -- what time
11 does your client need to -- your witness need to leave?

12 MR. SHUMAN: 1:30, I think we said. 2:30. I think
13 it was 2:30.

14 THE COURT: He needs to leave by then?

15 MR. SHUMAN: Yes.

16 THE COURT: Yeah. So we'll take a lunch break. I
17 don't know when it will be, but we'll probably end up breaking
18 up this witness. I don't know because --

19 MS. DEGTYAREVA: I think I anticipate this should be
20 a relatively short witness.

21 THE COURT: All right. Mr. Reinstein, would you step
22 right up here to the clerk to be sworn.

23 (Witness sworn.)

24 MS. DEGTYAREVA: May I proceed, Your Honor?

25 THE COURT: You may.

1 JOEL REINSTEIN,

2 HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
3 FOLLOWS:

4 DIRECT EXAMINATION

5 BY MS. DEGTYAREVA:

6 Q Good morning, Mr. Reinstein. How are you?

7 A All right. You know.

8 Q Okay. Great.

9 THE COURT: Can you pull your chair up and move that
10 mike so it's sort of toward you? There you go. You don't
11 have to be right at it, but just --

12 THE WITNESS: All right.

13 THE COURT: Thanks.

14 THE WITNESS: Oh, good.

15 Q (By Ms. Degtyareva) Mr. Reinstein, have you attended any
16 of the protests that occurred in Ferguson after the shooting
17 of Mike Brown?

18 A Yeah. I was there from Friday -- I believe it was
19 August 15th -- up through the next Saturday.

20 Q And did you go to the protests during all of those days?

21 A I went there every day except for Tuesday, the 19th.

22 Q And when you say you went to --

23 MR. ISAACSON: If I may ask, you said the next
24 Saturday. The next day was a Saturday, and then there's eight
25 days later.

1 A Right. I was there for eight days, yeah.

2 Q (By Ms. Degtyareva) So when you say you went to the
3 Ferguson protests, can you just briefly describe what area
4 specifically you're referring to?

5 A Sure. So there was sort of this area where all the
6 protests were going on or at least the ones that I went to.
7 It was on Florissant Street from -- from like the McDonald's
8 in like the southwest corner and the Family Dollar in the
9 southeast corner to -- you know, up to like the QT that was
10 burned down.

11 Q Why did you go to the Ferguson protest area?

12 A So I am a volunteer legal observer with the National
13 Lawyers Guild. They put out a call a couple of days before I
14 went down for more legal observers. So our role is to -- we
15 come to protests. You know, protestors ask for the National
16 Lawyers Guild to come send legal observers. We're volunteers,
17 and then we just sort of observe the protest. We observe the
18 police and like take notes on what they're doing.

19 THE COURT: Hold on. Hold on. You've got to slow
20 down.

21 THE WITNESS: Oh, got you.

22 THE COURT: The court reporter is taking down
23 everything you say, and you're going really fast. Also, I've
24 been telling everybody else to speak up, but you're too close
25 to that mike, so I'm sorry.

1 THE WITNESS: All right.

2 THE COURT: I apologize.

3 THE WITNESS: How about this?

4 THE COURT: Yeah. So you were stopping at about
5 "were there to observe the police."

6 A Okay. So --

7 THE COURT: I tell you what; why don't you give him
8 another question. You asked him why he -- well, the question
9 was why you went.

10 A Yeah. To do legal observing.

11 Q (By Ms. Degtyareva) All right. And could you please
12 describe what legal observing is?

13 A So, basically, we watch the police. We take notes on
14 what they're doing to -- and then we give our notes to the
15 National Lawyers Guild, which will then, you know, potentially
16 use them to defend protestors in court, possibly prosecute
17 police if there's any misconduct, and then, of course, they
18 instruct us we don't get involved in the protests, like we
19 don't participate in the protests, we don't give protestors
20 any advice, and if we get any orders from the police, we're
21 supposed to comply. So, of course, I followed those
22 instructions while I was there.

23 Q While you were in the protest area, did you ever engage
24 in any kind of violent activity?

25 A Not at all.

1 Q Did you violate any laws that you're aware of?

2 A No.

3 Q And did you encourage anybody else in the protest area to
4 engage in violent activity?

5 A Definitely not.

6 Q Now, while you were in the protest area during that week,
7 did you ever see police officers tell anyone that they
8 couldn't stand still or that they had to keep moving?

9 A Yeah. I think the first time I saw that would have been
10 Monday, the 18th. Then I saw it again Wednesday and Thursday.

11 Q And when you saw police officers enforcing this -- I'm
12 going to call it the "keep moving" rule, just for ease of
13 reference.

14 A Uh-huh.

15 Q When you saw them enforcing the "keep moving" rule, did
16 you see what law enforcement agencies they were with?

17 A Just judging by the color of their shirts, yeah, they
18 would have been like, you know, County Police, Highway Patrol,
19 yeah.

20 Q So did you ever see somebody that you thought based on
21 the color of their shirt was from the County Police tell
22 protestors to keep moving?

23 A Yeah.

24 Q And, again, based on the color of the officers' shirts,
25 did you see anybody that you thought was from the Highway

1 Patrol --

2 A Yeah, yeah.

3 Q -- telling people to keep moving? Now, based on what you
4 observed while you were in the protest area, did it seem like
5 the police officers were consistently enforcing the "keep
6 moving" rule?

7 A No.

8 Q What do you mean by that?

9 A So, for example, it seemed that like -- so there was one
10 night where an individual was being arrested, and as a legal
11 observer, part of our job is to get information on people
12 getting arrested so that we can like, you know, track them
13 through the court system and provide legal support. So I
14 asked this guy his name. He didn't respond, but one of the
15 officers in the vicinity immediately told me to keep moving,
16 and that was after like, you know, I barely had been there for
17 like -- you know, like I'd hardly been standing for like a
18 minute, and then other instances -- for example, I believe it
19 was on Monday when a large group, you know, came south down
20 Florissant, protesting and marching, and I overheard some
21 officers -- I'm pretty sure it was the corner of Florissant
22 and Canfield -- saying something to the effect of "Well, like
23 we'll let them go for now." Like, you know, it's essentially
24 "We're not going to enforce the rule right now." And they got
25 to the south end of the protest area. They had this sort of

1 standoff with the police. It might have been an hour, an hour
2 and a half, and it was only after that point, you know, that
3 they were told to disperse, so just like -- and then, of
4 course, on Friday, the rule didn't seem to be, you know,
5 enforced on Friday.

6 Q So when you describe this incident with the large group
7 who was standing still, how long were they standing still
8 before they were told to keep moving?

9 A I mean like an hour, an hour and a half.

10 Q And did you see any incidents when smaller groups of
11 people were standing still for a shorter period of time and
12 told to keep moving?

13 A Yeah, definitely.

14 Q And you described an incident where you were told to keep
15 moving when you asked somebody's name?

16 A Uh-huh.

17 Q Do you remember what day that happened?

18 A I'm pretty sure that would have been Thursday.

19 Q So when that happened, before you asked for the
20 gentleman's name who was being arrested --

21 A Uh-huh.

22 Q -- had you been standing still for any period of time?

23 A Yeah, you know, maybe like 30 seconds, a minute.

24 Q And before you asked for his name, did anybody tell you
25 to keep moving?

1 A No.

2 Q So it was only after you asked for the name of the man
3 getting arrested that somebody started to enforce this rule
4 against you?

5 A Right, yeah.

6 Q Now, again, based on what you saw while you were in the
7 protest area, did you discern patterns in when the rule was
8 being enforced and when it wasn't?

9 A I mean I would say that, you know, it seemed like it
10 wasn't being enforced or it seemed like it was being enforced
11 if you were doing something that the police didn't like, and
12 it also seemed to be more likely to be enforced if there was
13 more energy to the protest, if there were more people there,
14 yeah.

15 Q And so when you say when you were doing something the
16 police didn't like, can you give some examples of what that
17 might be?

18 A I mean trying to get the information of someone being
19 arrested would be something that I personally think they
20 didn't like just because, you know, you know, they knew we
21 were going to try to provide the person with legal support and
22 try to like prevent them from, you know -- you know, like
23 protect them in the courts.

24 Q Now, Mr. Reinstein, when you were asking for this
25 gentleman's name, were you engaging in any violence?

1 A No.

2 Q And as far as you were aware, were you breaking any laws?

3 A No.

4 Q Was there anybody around you in the area who was engaging
5 in any violence or breaking any laws that you were aware of?

6 A No. It was pretty calm.

7 Q Now, did you ever talk to any police officers about the
8 "keep moving" rule?

9 A Yeah. I asked an officer on Friday if they were still
10 enforcing the rule, and he said, "Yeah, you know, that's the
11 protocol." He said something to the effect of "That's the
12 protocol we've been given tonight, but apparently we're not
13 enforcing it." And then I also asked him, "You know, so like
14 what happens if someone, you know, refuses to keep moving when
15 you've told them to?" He was like, "Well, they could be
16 subject to arrest, but, you know, that's up to our discretion.
17 So like, for example, right now, you know, you're standing
18 here, but like I'm not about to arrest you" is what he said to
19 me.

20 Q So just to make clear, when you were talking to this
21 police officer, were you standing still in the protest area?

22 A Yeah.

23 Q Now, did the police officer tell you how he would decide
24 whether he was going to arrest somebody for standing still or
25 not?

1 A No. He just said it was like his discretion.

2 Q And could you tell which law enforcement agency this
3 police officer worked for?

4 A So I think he had a tan shirt, so I'm thinking County
5 Police.

6 Q Now, Mr. Reinstein, overall, do you think that the rule
7 against standing still was ever clearly explained to you?

8 A Not really, no. It was just kind of like, "Keep moving."

9 Q Did you understand what you had to do in order to avoid
10 violating this rule?

11 A Not really.

12 Q And were you afraid that you could get arrested for
13 violating this rule that you didn't understand?

14 A Yeah, absolutely.

15 Q And did you think that the -- or what effect did you
16 think the "keep moving" rule had on the other protestors in
17 the area based on what you observed?

18 MR. ISAACSON: Again, for the record, Your Honor,
19 this is speculative.

20 THE COURT: Overruled.

21 A So I would say that the protests were smaller. It seemed
22 like they -- you know, they diminished earlier in the night.
23 There were like fewer people sooner, and there wasn't nearly
24 as much energy. There wasn't -- you know, so I would say it
25 was pretty demoralizing.

1 Q (By Ms. Degtyareva) Did you think that the rule had
2 any -- hampered the protestors' ability to continue to
3 demonstrate?

4 A Yeah, absolutely.

5 Q And why do you say that?

6 A Because you couldn't stand in one place, you know, you
7 couldn't -- you couldn't stand in the street. You couldn't,
8 you know, congregate in large groups, it seemed like, you
9 know, and also, you know, it tired people out. Like, you
10 know, you're on this like roller rink of protest, and
11 eventually, you're tired of walking, and you want to go home,
12 and you can't -- you can't just like take a break in the
13 protest area, you know.

14 Q Now, Mr. Reinstein, during all of the time that you saw
15 police officers telling protestors that they had to keep
16 moving, did you ever hear them tell protestors that there was
17 an alternate zone where they could go to and continue
18 protesting while standing still?

19 A No.

20 MS. DEGTYAREVA: Thank you. That's all I have for
21 now.

22 THE COURT: Cross-examination.

23 CROSS-EXAMINATION

24 BY MR. SHUMAN:

25 Q Hi, Mr. Reinstein. Nice to meet you.

1 A Hi. What's your name?

2 Q Mike Shuman is my name. I'm with the St. Louis County
3 Counselor's Office. I'll be very brief.

4 A Okay.

5 Q Your testimony a moment ago was that the five-second rule
6 had a -- I'm putting words in your mouth; I appreciate that --
7 a deleterious effect on the numbers of protestors that were
8 there.

9 A Uh-huh.

10 Q How in the world do you know that?

11 A The protests just got smaller.

12 Q But how in the world do you know that the enforcement --
13 that there weren't a thousand different reasons that the
14 protestors were not there in as large numbers?

15 A I don't. There could have been other reasons.

16 MR. SHUMAN: But you didn't mind -- no. Okay.
17 That's all, Judge.

18 THE COURT: All right. Mr. Isaacson.

19 CROSS-EXAMINATION

20 BY MR. ISAACSON:

21 Q Just a few things. Part of your job out there was to
22 collect evidence to file lawsuits against police officers,
23 correct?

24 A Something to that effect, yeah.

25 Q I mean you wrote that in your declaration, right?

1 A Yeah.

2 Q Okay. And it was your practice to attend the
3 demonstrations during that eight days between about 9:00 p.m.
4 and 2:00 a.m.; is that accurate?

5 A Yeah, roughly. I mean it would vary, but yeah.

6 Q And during that eight days, I take it there were good
7 numbers of people that were out there between 9:00 p.m. and
8 2:00 a.m.; is that fair?

9 A Yeah, more earlier than later, but yeah.

10 Q When you say "earlier than later" --

11 A Oh, sorry.

12 Q -- you mean earlier in the week or more earlier --

13 A Earlier in the week, right.

14 Q Okay.

15 A Yeah.

16 Q And so when we say earlier in the week, we're talking the
17 16th, 17th, 18th, in there, correct?

18 A Yeah, yeah.

19 Q Okay. And what sort of numbers would you estimate were
20 out there on those -- on those early nights?

21 A You know, in the hundreds. I mean it's pretty hard to
22 say, but --

23 Q Okay. That's a lot of people?

24 A Yeah, yeah.

25 Q Did you ever observe any violence from any of the

1 protestors? And by "violence," I mean them throwing any
2 articles of any kind, be they bricks, bottles, any other
3 articles, gunfire, Molotov cocktails, anything like that?

4 A The only thing I saw was throwing water bottles.

5 Q You mentioned the QT was burned down, correct?

6 A That was before I came.

7 Q Okay. What is your understanding of what a State Trooper
8 uniform looks like?

9 A I just understood that they were blue. You know, State
10 Troopers are blue. The County is tan. I guess --

11 Q Oh, I'm sorry.

12 A And then I guess the National Guard was there.

13 Q What was your understanding of the color of a Ferguson
14 police officer's uniform?

15 A A Ferguson police officer, I would have -- I would have
16 thought would be tan.

17 Q You have no knowledge?

18 A No.

19 Q Okay. Did somebody tell you a State Trooper's uniform
20 was blue, or is that an assumption?

21 A Yeah, that's what, you know, people were talking about,
22 yeah, saying State Troopers are blue, County is tan.

23 Q Okay. And at night, it's difficult to distinguish shades
24 of blue probably, huh?

25 A Oh, like from dark blue to light blue?

1 Q Yeah.

2 A I mean I would say I just wouldn't be able to tell you
3 like, well, dark blue signifies X and light blue signifies Y,
4 but I think it was well lit enough that I -- you know, if I
5 thought, oh, a different agency is dark and a different agency
6 is light, I would have been able to tell.

7 Q When was the first time you thought about the issue of
8 what color uniforms were the officers wearing?

9 A I don't know. Probably -- probably Saturday.

10 Q Just two days ago?

11 A Sorry. No. I should be clear. So the first Saturday
12 that I was there, the second day. Friday, we were there, you
13 know, really briefly, and we got tired really quickly because
14 we'd just driven in like eight hours or so.

15 THE COURT: Saturday, the 16th, in other words?

16 THE WITNESS: Right, right.

17 MR. ISAACSON: Okay. I don't have anything else.

18 Thank you.

19 THE COURT: Redirect?

20 MS. DEGTYAREVA: No, nothing further, Your Honor.

21 THE COURT: All right. Why don't you step down.

22 Okay. How many -- how many more witnesses does the
23 Plaintiff have?

24 MR. DAVIS-DENNY: We have two more witnesses, Your
25 Honor. The next one, I expect the direct will last between

1 five and 10 minutes. I'm happy to do it after lunch, before
2 lunch, whatever you want.

3 THE COURT: Well, here's what I'd like to do. I
4 would like to go ahead and have lunch now from now until 1:00
5 p.m., and then I would like for the County to take its witness
6 out of order because I don't know how long it's going to take
7 and I don't want to get into a situation where there's not
8 enough time to cross-examine, et cetera. Okay. With the one
9 witness, right? That's the only one you have a problem with?

10 MR. SHUMAN: Well, with the time problem. We have a
11 second County witness, but we can wait until the Plaintiffs
12 conclude.

13 THE COURT: Yeah, we're just going to do the witness
14 that you say has to leave. Right. So that's -- we'll do that
15 right after lunch, and then we'll pick up with the rest of the
16 Plaintiff's case.

17 Okay. Court will be in recess until 1:00 p.m.

18 (Court recessed from 12:06 p.m. until 1:01 p.m.)

19 THE COURT: All right. So, Mr. Shuman, you're going
20 to present a witness out of order?

21 MR. SHUMAN: Yes, Your Honor.

22 THE COURT: You may proceed.

23 MR. SHUMAN: Call Chief Jon Belmar.

24 THE COURT: Sir, would you step right here to the
25 clerk to be sworn?

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JON BELMAR,

HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
FOLLOWS:

DIRECT EXAMINATION

BY MR. SHUMAN:

Q Hi, Chief.

A Good afternoon.

Q We all know who you are, but could you identify yourself
for the record, please?

A My name's Jon Belmar. I'm a Colonel with the St. Louis
County Police Department, and I'm the Chief of the St. Louis
County Police Department.

Q Quickly tell me your history with the County Police.

A I've been here 28 years. I've been the Police Chief
since January. Prior to that, I've been a Commander on the
department, which means Lieutenant or above, since April of
1998. Prior to that, I was a Sergeant and a Patrolman.

Q I want you to tell us about the command structure for the
way the law enforcement agencies worked together in Ferguson
prior to Thursday, August 14th, prior to the 14th.

A So prior to the 14th, it was pretty much a collaboration
between St. Louis County, the State Highway Patrol, and
St. Louis Metropolitan Police Department. So really, to be
fair, the St. Louis County Police Department had the most
officers on the ground there. So I would say, in all intents

1 and purposes, I probably had as much sway there because of my
2 rank and being the Chief, but I know that, for example, I was
3 with Sam Dotson, visiting with him on Monday morning after
4 Sunday, the 10th, and Captain Ron Johnson from the Highway
5 Patrol, and we seemed to all be there together in the evenings
6 when the protest area became dynamic.

7 Q How did the collaboration work?

8 A How did the collaboration work? Well, it was probably --
9 I think sometimes it's not as autonomous as people might
10 really think. So we were taking a looking at situations that
11 had occurred to us, the protests and some of the criminal
12 activity that arose thereof, and we would say, "Well, you
13 know, this tactic, for example, doesn't work" or "This didn't
14 work as well as we wish it would have, and what can we do
15 differently?" So we would discuss those things and then try
16 to develop tactics based on that that we thought would have
17 the ability to preserve life and injuries and property.

18 Q Prior to the 14th, which department had the final say?

19 A Well, I would think on a -- on a macro scale, it would be
20 the St. Louis County Police Department would have the final
21 say on strategies and tactics and things such as that. I
22 would imagine with the number of officers that were there,
23 that on a smaller scale, that on smaller decisions that were
24 made, that would probably be a little different, maybe pointed
25 directly toward a department that that officer worked for, but

1 on a macro scale, it would have been the County Police
2 Department.

3 Q Give me an idea of any one night -- let's take the
4 14th -- how many officers are on the scene.

5 A So that would have been Thursday, the 14th. There would
6 have been after 6:00 about 160 plus, pretty much close to 200
7 St. Louis County Police officers. That evening, I'm guessing
8 somewhere around 80 members of the Missouri State Highway
9 Patrol, perhaps 50 municipal officers, and I don't recall if
10 St. Louis was there that evening.

11 Q When did City of St. Louis show up?

12 A Well, they were there on Sunday evening, the 10th, and
13 the 11th. They weren't there on Tuesday, the 12th, or
14 Wednesday, the 13th. And I don't remember if they were there
15 on the 14th, but they were back on the 15th.

16 Q Did anything happen on Thursday, August 14th, that to
17 your mind changed the command structure?

18 A So the Governor came into St. Louis, and he had a press
19 conference at UMSL, and he met with me, my senior staff, the
20 Superintendent of the Highway Patrol, his senior staff, Bob
21 McCulloch, et cetera; Mr. Dooley, the St. Louis County
22 Executive.

23 Q Do you remember where this meeting took place?

24 A It was at the J.C. Penney Building at UMSL, and it
25 occurred sometime in the early afternoon; I would say 1400

1 maybe. So I had heard that the Governor was going to place
2 the State Highway Patrol in charge of the West Florissant
3 corridor and the protest and the criminal activity thereof
4 that we had been experiencing. I didn't know anything about
5 this prior to the morning of the 14th, so I went -- I was
6 invited to go to the J.C. Penney's Building at UMSL. In fact,
7 I did. I had an opportunity to meet with the Governor, and he
8 expressed to us that he was going to put the Highway Patrol in
9 charge of policing the West Florissant corridor and that -- I
10 think he stopped short of -- he didn't do a State of Emergency
11 that day. So we met privately. I say privately. There were
12 several of us in the room, but it wasn't in front of the
13 media, and then we went upstairs immediately thereafter, and
14 he did a press conference. I stood about 15 feet away from
15 the Governor, and he advised everybody that the Highway Patrol
16 was going to be assuming command of the West Florissant
17 corridor.

18 Q So what was your role in the command structure after
19 that?

20 A So it was clear to me after that that the Highway Patrol
21 was going to be in charge of it. I mean I was standing
22 adjacent to the Governor when he said that. So that part was
23 patently clear to me; however, I did have 160 to 200 police
24 officers down there every evening, and so after that, the way
25 I looked at it was that my role in this was going to be

1 extending advice, collaborative.

2 Q Would you describe the working relationship between the
3 Highway Patrol and the County Police after the Highway Patrol
4 arrived on the scene? How did they get along?

5 A The commanders? Frankly, it was outstanding. Human
6 nature being what it is, I would imagine it wasn't -- it
7 wasn't perfect, but I -- these -- these commanders from the
8 Patrol from the Superintendent on down, I have a lot of regard
9 for, and I know they of me. As far as our police officers
10 went, I think they understood that this was one of those
11 things to where we had to make sure that we served the public
12 the best we could there and that they were there for each
13 other. So I didn't -- I don't think there was any sort of an
14 acute problem.

15 Q I want to draw a distinction between Saturday, August 16,
16 and the days prior to that time. Okay. Prior to Saturday,
17 August 16, how were operational decisions made?

18 A Prior to Saturday, August 16th?

19 Q Yes.

20 A What we would do is we would take a look every evening at
21 what had happened the previous day. Actually, we would do
22 that right after that day kind of ended with a press
23 conference. We would talk about failures and successes,
24 things that happened well and things that could have happened
25 better and things that we might want to prevent and different

1 scenarios that were occurring on the West Florissant corridor.
2 So we would all talk about whatever kind of strategies or
3 tactics that we thought might be worth a try.

4 Q Can you give me an example?

5 A So one of the things that we did was that Dotson, Chief
6 Sam Dotson out of St. Louis -- every year, he has the Annie
7 Malone Parade, and he said that during that, they form pods,
8 and pods are officers that go out in three to five to six
9 officers, and they kind of stand every 25 meters or so apart
10 from each other and just kind of monitor things that are
11 happening. So, for example, one of the things that we would
12 come out of with the pod system was that we wanted a relaxed
13 bearing. This wasn't every night, but, for example, we found
14 that a very relaxed bearing worked a lot better than a very
15 structured bearing. So we didn't really want, for example,
16 toes on the shoulder or anything like that and these guys
17 broken down to parade rest. We really wanted them just
18 leaning up against the storefronts.

19 THE COURT: Okay. Hold on. You didn't want toes on
20 the shoulder?

21 THE WITNESS: Uniform shoes, you know, being right
22 there to where we're right next to the roadway.

23 THE COURT: On the shoulder? Okay. Toes on the
24 shoulder of the highway?

25 THE WITNESS: Right.

1 THE COURT: Of the road? Okay.

2 THE WITNESS: Of West Florissant.

3 THE COURT: I just didn't understand the phrase.

4 THE WITNESS: Sorry, Your Honor.

5 THE COURT: Okay. Go ahead.

6 THE WITNESS: Sorry.

7 A So we would talk about those type of things, and these
8 were discussions, and then we would develop strategies thereof
9 that we thought might be productive the next day.

10 Q (By Mr. Shuman) So this is, again, prior to August 16.
11 If you came up with that kind of a strategy, who made the
12 final decision as to whether it would be implemented?

13 A It was collaborative on the decision making, but after
14 the 14th, I think pretty much everybody there, every commander
15 or commanding officer, we made sure that Captain Johnson was
16 aware of what the strategy was going to be going forward since
17 the Governor named him as the commander.

18 Q Do you personally think you had the option to order
19 anything concerning operational activities that Captain
20 Johnson had not okayed?

21 A On a macro scale, no. I mean I wouldn't have done that.
22 I would have made sure that Captain Johnson -- I had his
23 endorsement before we put any plan in place, as would have any
24 other commander there.

25 Q Okay. We're talking prior to August 16, right?

1 A Yeah, once the Governor talked on the 14th.

2 Q Okay. I'm going to show you what I have marked as County
3 Exhibit A, and I think I can --

4 THE COURT: Yeah, hold on. We'll turn on the --

5 MR. SHUMAN: I should know how to do this, but I'm
6 sorry I need the help.

7 THE COURT: Hold on. We're just trying to change the
8 system, so the input is available. There you go.

9 Q (By Mr. Shuman) Chief, do you know what this is?

10 A It appears to be the written documentation of the State
11 of Emergency that Governor Jay Nixon issued, I believe, on the
12 16th of August 2014.

13 Q Have you read it prior to -- had you read it prior to
14 today?

15 A I've seen it prior to today. I had it described to me
16 prior to today, but I haven't read it word-for-word either
17 then or now.

18 Q Would you please read the third-to-last paragraph, the
19 one beginning --

20 THE COURT: Can you make that bigger, make it larger
21 so that it will be bigger on the screen? The whole page
22 doesn't have to be there, but -- yeah, the other way. There
23 you go.

24 THE WITNESS: That's okay. I can read that.

25 THE COURT: That's good.

1 Q (By Mr. Shuman) Can you read that?

2 A "I further order that such other local law enforcement
3 agencies as deemed necessary by the Superintendent of the
4 Missouri State Highway Patrol to maintain order in the city of
5 Ferguson shall assist the Missouri State Highway Patrol when
6 requested by the Superintendent and such law enforcement
7 agencies when operating in the city of Ferguson shall
8 cooperate with all operational directives of the Missouri
9 State Highway Patrol."

10 Q What effect did that order have on the way you viewed
11 your ability to give commands?

12 A Final commands, I made sure that everything was ran past
13 Captain Johnson.

14 Q Chief, were you given explicit directions or commands
15 concerning enforcement of Missouri's refusal-to-disperse
16 statute?

17 A I was given direction on that. We -- Saturday, the 16th,
18 there was a curfew put in place. It was pending. It was
19 imminent. It was going to be put in place. So one of the
20 questions that I think many of the senior commanders had -- I
21 know I had this question -- was, well, if we have a curfew,
22 then how are we going to enforce this because there's going to
23 be situations to where we may not be able to figure out
24 exactly what we're looking at on the corridor with the curfew
25 because there could be people there for very legitimate

1 reasons. Anyway, those were some of the things that we were
2 thinking about, I know I was thinking about. I received
3 direction about sundown, maybe a little afterwards -- it's
4 hard telling -- on a phone call. I don't recall who the call
5 was from. I assume -- I would have to tell you my best
6 recollection would be it would have been from a member of the
7 command staff of the Highway Patrol, saying that we were going
8 to use failure to disperse as the charge in case we had to
9 arrest somebody if they didn't comply with the curfew, and I
10 thought okay. I -- I thought it was a little unusual, not
11 tremendously so. I just hadn't really considered that one. I
12 called Mr. McCulloch, Bob McCulloch, the Prosecuting Attorney
13 for St. Louis County, just to kind of run it past him, not
14 really to get his permission, but just to say, "Bob, this is
15 what's going on." He said, "Yeah. I'm looking at that. It's
16 probably something that would certainly apply there." So at
17 that point, I let my charges know that we were going to use
18 failure to disperse given the fact we were going to -- if in
19 fact we had to make an arrest thereon.

20 Q Did you believe that you had discretion not to command
21 enforcement of this refusal-to-disperse statute?

22 A Well, I mean I didn't think I had a tremendous amount of
23 discretion in that given the curfew scenario or the intent of
24 what I thought the Governor was trying to do with the curfew.
25 I felt like that they had told us that that was the most

1 appropriate charge, and I was -- I agreed with that. I
2 understood what he was saying, and that's what I was going
3 to -- that's what we were going to do.

4 Q And had you not agreed, did you think you had the
5 authority to say, "I don't want to be enforcing this"?

6 A No. I mean I wasn't going to get into an issue of
7 saying, well, I would rather charge them with this or this or
8 this at this point. I'm not an attorney. I assume that the
9 attorneys in Jefferson City had taken a look at this and they
10 had drilled it down, and based on that, I just assumed that
11 that was the best one to go with based on their advice, their
12 counsel.

13 Q So after receiving that direction about enforcing the
14 refusal-to-disperse statute, did you personally give any
15 commands to police officers about how we're going to be
16 enforcing it?

17 A I told my commanders that work under me that in fact that
18 failure to disperse is what we were going to use. I think
19 they looked it up, and then I told them that I wanted to make
20 sure that we did announcements to people prior to arresting
21 them or at least giving them fair warning for failure to
22 disperse and that when possible, when we thought we were going
23 to be in situations to where we had to do that, that I wanted
24 those things done over the intercom, those "Please disperse or
25 otherwise you're subject to arrest," et cetera.

1 Q Just generally, after -- after the issuance of this
2 Executive Order that's Exhibit B, what was your belief as to
3 your ability as the Chief of the County Police to give
4 operational commands in Ferguson after the Highway Patrol
5 or --

6 A Well, it was undermined obviously. I didn't feel like I
7 was left totally out. Again, it was a collaborative, but as
8 far as the final say, I didn't have that any longer.

9 Q I wish you'd describe -- and you may have gone into this
10 before, but would you say what your role was personally in the
11 development of operational plans in Ferguson?

12 A Throughout? The beginning? The end? What?

13 Q Well, let's say post emergency order, post 16th.

14 A Well, listen, like I said, I had a -- I had a very good
15 working relationship with the senior staff of the Highway
16 Patrol and my senior staff and other agencies that might be
17 there, which generally would have been St. Louis Metropolitan
18 Police Department, and my role was to ensure the public
19 safety, to put plans in place that, obviously, protected life
20 and property while trying to protect certain freedoms of those
21 that wanted the ability to be able to protest and assemble
22 lawfully down there in the West Florissant corridor, and
23 finally to protect my officers.

24 Q And how was the final decision made as to any particular
25 operational action after the 16th?

1 A Pretty much regardless of what it was, if there would be
2 a room of commanders talking about, perhaps, a strategy that
3 we might -- that might bear fruit or whether it was out
4 actually walking on West Florissant, if there was something
5 that I noticed and I observed this with other commanders that
6 we think we wanted to employ, then I would either call or walk
7 to Captain Johnson and say, "Hey, we're looking at doing this.
8 What do you think?" And vice versa; he'd come over to us and
9 say, "I don't like the way this looks or whatever. We need to
10 alter this."

11 Q I think we all know, but would you say who Captain
12 Johnson is or was?

13 A Captain Ron Johnson is a captain of the Missouri State
14 Highway Patrol, and he is currently billeted as the commander
15 of Troop C here in St. Louis.

16 Q So did you have any authority to give operational
17 commands absent Captain Johnson's okay?

18 A Not on a grand scale, no, I mean, but the bottom line is
19 we were always there together, so it wasn't an issue to where
20 I -- I or anybody else suffered to try to find him because,
21 you know, this was 18 straight days of just pretty much living
22 with each other with the exception of maybe four, four and a
23 half hours from about 4:00 in the morning to 8:00 in the
24 morning.

25 Q Are you aware that the State of Emergency was lifted?

1 A I am aware that it was lifted, and I cannot tell you what
2 day that happened. Sorry.

3 Q Okay. Well, today, on September 29, what is the command
4 structure for operational decisions in Ferguson?

5 A Well, that's -- that would be up to the Ferguson Police
6 Department at this point. There are certain occasions --
7 several in the past week -- where they have called for
8 additional resources in the city of Ferguson at the request of
9 Chief Tom Jackson, and those are municipal officers and
10 members of the Highway Patrol and in many cases St. Louis
11 County officers that respond up there to assist, but as far
12 as, you know, the Unified Command at this point, based on what
13 is not happening on the ground, there really is -- I mean it
14 would be up to Chief Jackson to make the decisions on those
15 type of things.

16 Q What's your belief about whether you and the County
17 Police will follow directions about operations if any are
18 given by Captain Johnson?

19 A In the future?

20 Q Yes.

21 A We would -- we would follow them. You know, the bottom
22 line is I guess we could talk for a long time about whether
23 the Governor is going to do another State of Emergency or
24 decree the same thing, but if in fact he does, if that's your
25 question, we're going to fall in line and do what's best for

1 the community, and the bottom line is that egos need to be set
2 aside on this thing. There were a lot of successes there if
3 you want to talk about a lack of loss of life and injuries,
4 and that may be very difficult to sustain, and we're going to
5 do everything we can to make sure that happens, and if that
6 means 100 percent cooperation, then that's what we're going to
7 do.

8 Q Chief, do you know if the County Police are actively
9 enforcing the refusal-to-disperse statute in Ferguson today?

10 A Well, they're not actively doing it today. I can't speak
11 for what any one of 865 police officers may be doing at any
12 given time, but I was in Ferguson Tuesday evening, I believe,
13 and I know I was there Saturday evening, and I had an
14 opportunity to observe some of the protests, and I know the
15 recent one on Saturday, we didn't do any of that. They --
16 they were allowed to congeal, to stay in the same area, and
17 then when I went over to the Ferguson Police Department, I
18 noticed there was protestors across the street, and they
19 stayed across the street. They actually did come across at
20 one point when the media started their press conference, but
21 they weren't made to march that I saw.

22 Q Let me ask you; are you -- are you aware of a command
23 issued by Captain Johnson for police in Ferguson to keep
24 protestors moving?

25 A Yeah, command's an interesting word, but, yeah, we had a

1 theory that we thought that -- and Captain Johnson thought it
2 would be a good idea if we kept everybody moving based on what
3 we had observed when the crowds became large, especially, in
4 the evening, late evening. So we felt like that it was --
5 with the failure-to-disperse guidance that we'd received from
6 the Governor's office and the issues that we'd observed with
7 the large crowds and some of the activity that spun out of
8 that, I think Captain Johnson felt like -- I hate to speak for
9 him; I'll just tell you what I observed -- that what we
10 discussed was that if we keep the crowds moving, then we have
11 less of a chance for any criminal activity to embed themselves
12 into an area that might be static, and it wouldn't be that
13 easy if they were moving, so --

14 Q Tell us about some of the things that happened.

15 A That was -- that ended up being a directive, to answer
16 your question.

17 Q Well, yes. Thank you. Tell us about some of the things
18 that happened when the people interspersed with the crowds?

19 A Well, I mean I personally observed rocks, Molotov
20 cocktails, bottles, frozen bottles, bottles with urine,
21 although I didn't personally test it, but that's what the
22 officer thought when it blew up and hit him, and there were
23 shots, gunfire within the crowd, both in the air and directed.
24 So those are some of the things that I observed. There
25 were -- I think within the first 11 days, there were five

1 shootings within the protest corridor. I observed those also.

2 Q Did you personally give any commands or directions to
3 County police officers to keep protestors moving?

4 A I don't specifically remember a moment, but I'm sure I
5 did.

6 Q Would you have given that direction had Captain Johnson
7 not okayed it?

8 A No. And, again, it was a tactic we were using.

9 Q Here today, on the 29th of September, do you have any
10 plans to command the County Police to keep protestors moving
11 and not standing still?

12 A No. We've talked about operational plans. The truth of
13 the matter is that it was dynamic and it changed
14 minute-by-minute, sometimes even less than that, and I think
15 that if I were to foresee a future where people would be able
16 to stand and there wouldn't be anything negative that came out
17 of it regarding safety or property, then that would probably
18 be the tactic I'd want to go with.

19 Q But you don't have any immediate plans, I take it?

20 A No. I mean we have some operational plans, and again,
21 what I was trying to express to you is that whatever we felt
22 like that worked that allowed peaceful protests down there, we
23 were all for. That's what we wanted to make sure that
24 happened, but when we noticed certain things and we observed
25 night after night after night after night certain patterns,

1 then that's why we developed tactics from that, and what I
2 said was if I needed -- if I would need to alter those and do
3 a 180 and I thought it would work, I'd do that.

4 MR. SHUMAN: Chief, I think I'm going to wrap it up.

5 Judge, at this time, I'd like to ask for the
6 admission of County Exhibit B, and I will ask the Court to
7 take judicial notice of Missouri statute § 44.100, which I've
8 marked as County Exhibit A.

9 THE COURT: Is that the failure-to-disperse statute?

10 MR. SHUMAN: No. This is -- 44.100 describes the
11 emergency powers of the Governor.

12 THE COURT: Okay. So A is -- have you shown us that?
13 So the first one you showed -- this thing up on the screen is
14 not A; it's B?

15 MR. SHUMAN: It's B, yes, Judge.

16 THE COURT: That's B. Okay. So Exhibit B, I'll
17 receive that into evidence, and then tell me the statute you
18 want.

19 MR. SHUMAN: 44.100.

20 THE COURT: Yeah, I'll consider the statutes. I
21 don't think I have to take judicial notice of them. They're
22 the law. So, but, yeah, I'll take judicial notice if that's
23 what you want. It's Exhibit B? No. That's Exhibit A.

24 MR. SHUMAN: And I'm asking for the admission --

25 THE COURT: And you have a copy of that for me?

1 MR. SHUMAN: Yes, I do.

2 THE COURT: I'll receive it into evidence.

3 MR. SHUMAN: And asking for the admission of Exhibit
4 B, which is this Executive Order.

5 THE COURT: Right. I've received that into evidence.

6 MR. SHUMAN: Pass the witness.

7 THE COURT: Cross-examination.

8 MS. DEGTYAREVA: May I proceed?

9 THE COURT: You may.

10 CROSS-EXAMINATION

11 BY MS. DEGTYAREVA:

12 Q Good afternoon, Chief Belmar.

13 A Good afternoon.

14 Q So I'd like to just make sure I understand your testimony
15 about the orders that you received from the Highway Patrol and
16 the authority that you had with regard to those orders.

17 A Yeah.

18 Q So you talked during your direct examination about macro
19 versus minor -- micro decisions. Did you have to get
20 permission from Captain Johnson for every macro decision that
21 you would implement in the Ferguson protest area?

22 A Yes. I made sure that I had his endorsement.

23 Q And what about for micro decisions about how to actually
24 implement the order that he gave you?

25 A No, I mean, we didn't do -- we didn't do it that way. I

1 mean if I'm told to go do something, then I can go do it.

2 Once I understand what I'm supposed to do, then those can be
3 carried out without having to continue the discussion of the
4 collaboration.

5 Q So you had the authority to establish the ways in which
6 you carried out the instructions that Captain Johnson gave
7 you?

8 A No, I wouldn't say it's quite that simple. I would say
9 that we developed the plan or the plan that he gave us on the
10 failure to disperse or that we ended up with, that it was a --
11 that that's how we did it. It was going to be failure to
12 disperse, and then I think the issue is the discretion each
13 officer applied to it on how it was actually carried out.

14 Q So you didn't have to get permission from Captain Johnson
15 to figure out how each individual officer would apply the
16 refusal-to-disperse statute?

17 A No.

18 Q Now, you also testified that you received an order from
19 somebody in the Highway Patrol about enforcing the
20 refusal-to-disperse statute in relation to the curfew that was
21 in place in the Ferguson protest area. Do you remember
22 exactly what that person told you about the
23 refusal-to-disperse statute?

24 A I believe he told me that -- and I wish I could remember
25 who told me this, but I don't. I can speculate, but there's

1 no reason to. The -- that I believe I was told that Ted
2 Ardini, who was the Governor's, I believe, Chief Counsel, had
3 advised that -- had called somebody and said that's what
4 they're going to go with is the refusal to disperse, and I
5 received that on a phone call.

6 THE COURT: Can you explain what you mean when you
7 say, "That's what they're going to go with"? I mean give me
8 the steps. What do you mean "go with"?

9 THE WITNESS: We had this curfew, Your Honor.

10 THE COURT: Right.

11 THE WITNESS: And so with the curfew, there's all
12 sorts of things that come with it because we typically only
13 enforce curfews with minors. So when we're going to deal with
14 curfews with adults, it's kind of new territory for us. I
15 mean would it be as simple, I wonder, as just failure to obey
16 a curfew; would you do peace disturbance, trespassing, and we
17 could go on and on, so --

18 THE COURT: Yeah, so as I understand it, what you're
19 saying is you're talking about what would be used as the
20 charges if you arrested somebody for failing to abide by the
21 curfew?

22 THE WITNESS: Yes, Your Honor.

23 THE COURT: That's what you mean?

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Okay.

1 Q (By Ms. Degtyareva) And what time was the curfew in
2 place, or when did the curfew start?

3 A It started on Saturday, the 16th, I believe, and either
4 10:00 or 11:00 at night.

5 Q And on what day did the curfew --

6 A Maybe it was 9:00. I don't remember the exact time.

7 Q But the curfew was in the evening?

8 A Yes, ma'am.

9 Q And do you remember what day the curfew ended?

10 A I think it ended Monday morning, the 18th.

11 Q So were you told anything about enforcing the
12 refusal-to-disperse statute after the curfew ended?

13 A No.

14 Q And was it your understanding that the
15 refusal-to-disperse statute would only be used while the
16 curfew was in place in order to enforce the curfew?

17 A No, it wasn't.

18 Q Did you believe that you were instructed by the Highway
19 Patrol to continue enforcing the refusal-to-disperse statute
20 after the curfew?

21 A That was the statute that we continued to use. There
22 were other reasons to get arrested, but that was the main one
23 that we used.

24 Q And did you receive any specific instructions from anyone
25 in the Highway Patrol that the refusal-to-disperse statute

1 would be used for anything other than the curfew?

2 A I'm not sure it's quite that straightforward. I think
3 the agreement was, the message that got down to me and the
4 other commanders was that we were going to continue to enforce
5 failure to disperse.

6 Q So this -- and just to make sure I understand, this
7 command was a separate command from the original command of
8 enforcing the refusal-to-disperse statute --

9 A It was ongoing.

10 Q -- during the curfew? I'm sorry?

11 A It was ongoing, I think, is the easiest way to explain
12 it. That's how I understood it in my mind.

13 Q Now, you also testified that Ron Johnson thought it was a
14 good idea to keep everyone moving, especially in the evenings.
15 When you say that he thought it was a good idea, was he
16 recommending that you keep people moving or did he require you
17 to keep people moving?

18 A Well, in essence, part of the decision making was a
19 collaboration, but once the decision is made, it's a decision.
20 I mean it's a directive. So then it doesn't do any good for
21 Ron Johnson or myself to know this stuff. It's got to be
22 relayed to the police officers. So because of that, once that
23 decision is made -- and Ron Johnson has final authority on
24 that -- then it's going to have to be given to the officers,
25 saying this is -- failure to disperse is going to be a charge

1 tonight available to you when we get issues of large crowds
2 gathering and not moving, especially if we observe potential
3 activity that comes out of those that, based on our previous
4 observations, would lead a reasonable person to assume we're
5 going to have problems.

6 Q So did you participate in this collaborative decision
7 making in order to keep people moving in the protest area?

8 A I did.

9 Q And did you agree with the strategy, with the rationale
10 behind the strategy?

11 A I did.

12 Q Now, was it your understanding that this idea of keeping
13 people moving -- was that also an enforcement of the
14 refusal-to-disperse statute, or was this a different decision?

15 A No. I think it was -- I think it all kind of ties
16 together at some point in my mind. There was a broad area of
17 discretion allowed for that, I mean, frankly, 24 hours a day,
18 not only in the day but in the evening also to where, you
19 know, it kind of depends what you were looking at on whether
20 or not you felt it was going to be an issue or not. So the
21 number of people, tenor, agitation, different things like
22 that.

23 Q When you say there was a large amount of discretion, was
24 that discretion that you and your officers had in enforcing
25 the refusal-to-disperse statute?

1 A I'm talking just discretion I personally had. I mean I
2 would go down and walk on West Florissant several evenings,
3 and there would be groups that would be standing and not
4 marching or moving, and they were not compelled to nor would I
5 have compelled them to. So what I'm saying is that, you know,
6 I don't think I'm much different than any other officer who
7 when they see it, that, you know, there may be times where
8 this is going to become necessarily something we have to do
9 but not all the time.

10 Q Did Ron Johnson or anyone from the Highway Patrol tell
11 you how to -- how to exercise that discretion and when to
12 enforce the refusal-to-disperse statute?

13 A No. We discussed that, and we discussed that at roll
14 call briefly with our folks, or I don't mean briefly but
15 generally with our folks on, you know, listen, you know,
16 demeanor, bearing, discretion, different things like that on
17 what we expected from our officers, so that, you know, in many
18 ways, they weren't locked down to just having to do something
19 no matter what by rote. I mean they had some discretion as
20 they always do.

21 THE COURT: So I'm -- I'm -- is it your testimony
22 that there was not any practice of telling people they had to
23 keep moving if there wasn't anything -- you know, if it was
24 just a few people on the sidewalks and it was Monday morning
25 and they were praying or doing something else, are you saying

1 there was not a requirement that they had to keep moving?

2 THE WITNESS: Your Honor, the way I would explain
3 that is that there were pass-ons, I think, that confused the
4 officers from the evening, and the evenings would be that, you
5 know, we'd want to try to keep people moving, et cetera, but
6 I, frankly, will tell you that I don't think we were clear
7 enough as commanders after we went home and before we would
8 arrive back in the early afternoon to tell people that, you
9 know, if there's a different dynamic and there's not a
10 problem, then don't worry about it. Now, I see that as a
11 shortcoming, and we didn't notice that until after this was
12 all over because we didn't know that the pass-ons, the
13 protocols that would guide us for a 24-hour period or so -- I
14 don't think we understood that those probably needed to have a
15 different caveat during the day and they needed to have a
16 different explanation. We understand that now, but I didn't
17 understand that then.

18 Q (By Ms. Degtyareva) Chief Belmar, are you familiar with
19 the requirements of Missouri's refusal-to-disperse statute?

20 A I haven't read it recently.

21 MS. DEGTYAREVA: Well, Mr. Bales, could you please
22 put up what we've marked for internal purposes as #205?

23 A I actually did read it on the corridor, but I haven't
24 looked at it lately.

25 MS. DEGTYAREVA: Could you please just make the text

1 of the statute itself bigger? Thank you.

2 Q (By Ms. Degtyareva) So is this the refusal-to-disperse
3 statute?

4 THE COURT: Well, it is. I can tell you that unless
5 you've changed it somehow. It's 574.060 of the Missouri
6 statutes. Unless you've gotten an older version. No. This
7 is the one that's effective in '79. I believe this is the
8 current law.

9 Q (By Ms. Degtyareva) Okay. So this statute says that it
10 applies at the scene of an unlawful assembly or riot; is that
11 correct?

12 A Yes, ma'am.

13 Q And the statute says that it applies to refusals to obey
14 commands to depart from the scene of an unlawful assembly or
15 riot; is that correct?

16 A That's what it says.

17 Q So when you were giving the instructions to your
18 commanding officers and to the County police officers about
19 how to enforce the refusal-to-disperse statute, did you tell
20 them that they should enforce the statute even if there was no
21 unlawful assembly or riot?

22 A On their pass-ons, yeah, they were told that people
23 needed to keep moving and that that -- that's the instructions
24 that would have been given to an officer at the time.

25 THE COURT: So I still am -- so they were told,

1 "People need to keep moving, and if they don't keep moving,
2 you can arrest them for failure to disperse"?

3 THE WITNESS: Yes, ma'am, they would be subject to
4 arrest.

5 THE COURT: And that's what you mean when you say
6 enforcement of the failure-to-disperse rule?

7 THE WITNESS: Yes, ma'am.

8 THE COURT: Okay.

9 Q (By Ms. Degtyareva) All right. So you didn't tell your
10 officers anything about an unlawful assembly or a riot?

11 A I didn't think I had to.

12 Q Did you tell them anything about the criteria that they
13 should use when deciding whether or not to enforce the
14 refusal-to-disperse statute?

15 A We did and we discussed that at roll calls with our
16 officers that basically said, hey, you know, when you see --
17 we've -- based on what we've experienced over the last few
18 nights, this is what we're trying to prevent. We're trying to
19 prevent rocks, bottles, different things like that that may be
20 secreted in an area behind several people that will cause
21 problems, and based on that, we don't want to see those kind
22 of groups gather, so we want the groups to keep moving, and in
23 that way, they don't have the ability to do that, like I've
24 already explained. So we did give that out, but there was --
25 at no time did we tell officers that they absolutely had no

1 discretion.

2 Q Now, you were in the courtroom when Ms. Holbrook
3 testified and showed the two videos that she took on, I
4 believe, Monday, August 18th, and Tuesday, August 19th. Do
5 you remember those videos? If you'd like, I can play them
6 again for you.

7 A I remember them.

8 Q So, well, first, are the officers shown in those videos
9 employees of the County Police Department?

10 A They are.

11 Q And are the actions that the officers are taking in those
12 videos consistent with the instructions that you received from
13 the Highway Patrol about the refusal-to-disperse statute?

14 A I believe they were.

15 Q So are they also consistent with the instructions that
16 you gave to your officers about how they should enforce the
17 refusal-to-disperse statute?

18 A Yes.

19 Q Do you see any or did you see any evidence of an unlawful
20 assembly or a riot in those videos?

21 A No, I did not.

22 Q And did you see the officers telling people to depart
23 from the scene?

24 A I did. Well, they said they had to keep moving.

25 Q But did you see them tell people they had to actually

1 depart from the area?

2 A I don't recall that.

3 Q And were you aware that your officers were implementing
4 your instructions in this manner?

5 A Not during the day I wasn't.

6 Q Well, did you ask for reports from your commanding
7 officers about how your instructions were actually implemented
8 in the Ferguson protest area?

9 A Right. I talked to the commander during the day, and I
10 wasn't given a specific briefing on such as we witnessed
11 during the video.

12 Q Did you receive any reports from any of your individual
13 officers about these -- this type of enforcement of the
14 refusal-to-disperse statute?

15 A No.

16 THE COURT: Are we talking about a particular point
17 in time?

18 Q (By Ms. Degtyareva) During the week of Monday -- well,
19 starting on Monday, August 18th, until the present, did you
20 receive any reports from your commanding officers or
21 individual officers that they were enforcing the "keep moving"
22 rule?

23 A I made -- I made several direct observations when I would
24 get there in the early afternoon, you know, 13, 14, 1500. I
25 would -- I'd usually go down and drive on the corridor from

1 the command post up to Chambers, maybe a little bit further,
2 and come back. So I would see what was going on just to try
3 to get an idea of, perhaps, what the early evening and late
4 evening might -- might look like, so I did -- I did directly
5 observe what was happening on the corridor, but I certainly
6 wasn't there all the time.

7 Q So are you saying -- when you were there in the early
8 afternoon, did you see officers telling people to keep moving?

9 A I didn't.

10 Q Now, were you aware that a complaint was filed in this
11 court on August 18th, alleging that officers were prohibiting
12 protestors from standing still in broad daylight when there
13 was no unlawful assembly or riot?

14 A I was aware that there was a matter brought before the
15 Court.

16 Q Were you also aware that on that same day there was a
17 hearing in this court on a motion for a temporary restraining
18 order?

19 A I was aware of that.

20 Q So you were aware of the allegations made by the
21 Plaintiff in this case that the officers were enforcing this
22 rule when there was daylight, no violence?

23 A I don't think I was aware of the particulars of it, but I
24 was aware of the motion.

25 Q Now, after you received or after you became aware of

1 these allegations, did you then go and ask your officers
2 whether they were in fact enforcing the rule in this way?

3 A No. What we did was I talked with the majors from the
4 Highway Patrol and Captain Johnson and other commanders about
5 this on -- on -- I said, "Hey, you know, there's a challenge
6 to the failure to disperse," and that was really pretty much
7 it. You know, we -- we -- we had discussions again as a
8 matter of routine operational guidelines on kind of how we
9 were going to -- what our posture was going to be at any given
10 point in time. So the failure to disperse was certainly
11 something that we had in our quiver, but, you know -- and then
12 we learned that in fact the motion wasn't granted, the
13 temporary --

14 Q Well, did you take any -- did you take --

15 THE COURT: Excuse me. When you keep talking about
16 failure to disperse, are you talking about the same thing that
17 the Plaintiffs in this case have called, whether it's really a
18 rule or not, the "move along" rule or the five-second rule?
19 You're using those two terms interchangeably?

20 THE WITNESS: Yeah. We never talked about a
21 five-second rule. I don't know where that came from. It
22 didn't come from --

23 THE COURT: Okay. But the "move along" rule, is
24 that -- are you using that, the idea that people have to keep
25 walking or moving along -- when you're testifying here about

1 failure to disperse, are you saying they're the same thing?

2 THE WITNESS: Yes, Your Honor.

3 THE COURT: Okay. Thank you.

4 Q (By Ms. Degtyareva) So after you learned of these
5 allegations, did you take any additional steps to investigate
6 whether your officers were in fact enforcing the "keep moving"
7 rule in the manner described?

8 A No, because I wasn't a hundred -- I mean I just wasn't
9 aware of what the allegation was. I knew that there was an
10 allegation regarding failure to disperse, that there was going
11 to be a motion to see if there would be a temporary
12 restraining order to keep us from using that, and that, again,
13 I was aware that that for the moment wasn't granted, and I
14 learned that -- that there was an officer that did this during
15 the day. I didn't have the opportunity to view the video, and
16 I don't know if I knew that while I was still before the 26th
17 or if it was after the 26th where I learned it was during the
18 day.

19 Q Did you take any steps to find out exactly what the
20 allegations against your officers were?

21 A No, I did not.

22 Q And did you discipline any officers who had allegedly
23 enforced the "keep moving" rule in this way?

24 A I did not.

25 Q Did you discipline any of your commanding officers who

1 had been charged with supervising those officers?

2 A I did not.

3 Q And did you at any point after learning about these
4 allegations issue orders to your officers that they should not
5 enforce the "keep moving" rule during the day when there was
6 no violence?

7 A I did not.

8 MS. DEGTYAREVA: I don't have anything further, Your
9 Honor.

10 THE COURT: Mr. Isaacson, do you wish to question
11 this witness?

12 CROSS-EXAMINATION

13 BY MR. ISAACSON:

14 Q Sir, you talked about some criminal activity that you had
15 observed during those nights. In terms of -- you recall
16 Friday, August 15th; Saturday, August 16th; Sunday, August
17 17th. Those were pretty busy and hectic nights, were they
18 not?

19 A Yes, sir, they were.

20 Q Okay. And the things you described were both frequent
21 and ongoing during those nights; is that fair?

22 A Yes, sir.

23 Q All right. You have no problem characterizing those as
24 riots, do you?

25 A Not at some point.

1 Q Okay. And -- and a riot state was frequent -- you would
2 characterize it as a riot frequently during the nights of the
3 15th, 16th, and 17th, correct?

4 A At one point in the evening, yes, sir, it spun into that.

5 Q And these were -- would you characterize events during
6 those evenings as -- were they static, moving slowly, or would
7 they tend to change more quickly?

8 A It's hard to tell. I mean in the early -- in the early
9 evening, I would typically go out on West Florissant and walk
10 and shake hands and see people and talk, but it could switch
11 pretty quick. It normally didn't switch until after it got
12 pretty dark, but sometimes, it would be just about darkness
13 when -- when it happened, and I know that Saturday night was a
14 later night. I think it was okay until about maybe a quarter
15 'til 10:00 at least. It's hard to say, characterize exactly
16 when it was every night. I can remember some but not all,
17 but, yes, what would happen was that it would change, and when
18 it did, it changed pretty dramatically. It went from
19 basically being people that were there to assemble peaceably
20 to something totally different.

21 Q You indicated -- you gave us numbers of officers, and
22 they were considerable. You also -- I believe you said there
23 were approximately 50 from municipalities. How many different
24 municipalities were contributing during that weekend?

25 A For the purposes of this hearing, I would say it would

1 probably be at least two dozen.

2 Q Okay. I'm sorry, sir. I lost my train of thought here
3 for a minute. How many businesses did you see that got
4 damaged out there?

5 A Scores.

6 MR. ISAACSON: I have nothing further, Your Honor.

7 THE COURT: All right. Anything further of this
8 witness?

9 MR. SHUMAN: Yes, briefly.

10 THE COURT: Go ahead.

11 REDIRECT EXAMINATION

12 BY MR. SHUMAN:

13 Q Chief, when Captain Johnson gave the direction about
14 keeping people moving, did he tell you that in every instance
15 protestors have to keep moving?

16 A No.

17 Q Did his directions to you include that officers will have
18 discretion whether you're to keep people moving?

19 A I don't really recall. I wish I could think of an exact
20 instance, you know, kind of lock that down a little better.
21 Regardless of whether that was something that he articulated
22 to me, I didn't -- it was not my observations that discretion
23 was not able to be applied.

24 Q Say that again.

25 A It was not my observations that discretion by any

1 individual officer was unable to be applied.

2 Q Okay. What's the value of giving police officers
3 discretion to take a particular enforcement action?

4 A Well, because there's oftentimes not a lot of absolutes.
5 There can be at times based on certain things that are
6 happening and based on the seriousness of an event. So -- so
7 things that may be absolute during periods of gunfire at
8 Northwinds Estate and Chambers by the car wash, there would be
9 much less discretion that would be employed during a time like
10 that versus 6:30 in the evening when you're shaking hands with
11 a group of people and they're barbecuing and visiting and
12 protesting.

13 MR. SHUMAN: Okay. I think I'm done. I'd kind of
14 like it if you would stay. When you need to leave, you're
15 free. I don't intend to recall. I don't know if anybody else
16 wants to recall Chief Belmar.

17 THE COURT: Well, he has to leave, right, is what you
18 said? Yeah.

19 MR. SHUMAN: But not probably for about another 40
20 minutes or so.

21 THE COURT: Okay. Any further questions of this
22 witness at this time?

23 MS. DEGTYAREVA: No, Your Honor.

24 THE COURT: All right. You may step down.

25 THE WITNESS: Thank you, Your Honor.

1 THE COURT: And it's between you and your lawyer when
2 you leave. It's not -- we're -- as far as I'm concerned, you
3 can go.

4 All right. Plaintiffs may call their next or
5 Plaintiff may call his next witness.

6 MR. DAVIS-DENNY: Plaintiff's next witness is
7 Johnetta Elzie, Your Honor.

8 THE COURT: All right. Ma'am, if you'll step right
9 up here to be sworn, to the clerk.

10 (Witness affirmed.)

11 THE COURT: You may proceed.

12 MR. DAVIS-DENNY: Thank you, Your Honor.

13 **JOHNETTA ELZIE,**
14 HAVING FIRST DULY AFFIRMED, WAS EXAMINED AND TESTIFIED AS
15 FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. DAVIS-DENNY:

18 Q Good afternoon, Ms. Elzie.

19 A Good afternoon.

20 Q How are you? Could you start by telling us where you
21 live?

22 A I live in St. Charles, Missouri.

23 Q And have you been part of the protests in Ferguson?

24 A Yes.

25 Q What role have you played in the Ferguson protests?

1 A Overall, I've been an organizer and a documenter of what
2 I see and what's happening.

3 Q Why did you decide to get involved in Ferguson?

4 A It wasn't really -- it didn't start off as a want to get
5 involved. I was on Twitter, and I saw the photo of Mike Brown
6 come down my timeline, and people said that it happened in
7 St. Louis, and I couldn't believe that it had happened at
8 home. I couldn't believe that an unarmed black boy was
9 murdered in St. Louis, so I just had to go see it for myself,
10 and I went to go see it with my best friend down on Canfield
11 and just stood out there and talked to the neighborhood for
12 about an hour and saw the scene, and I just wanted to see it
13 for myself.

14 Q You -- you mentioned a moment ago that you -- you were a
15 documenter, I think.

16 A Uh-huh.

17 Q How did you do that? What tools have you used?

18 A Basically, just using all of the social media that I use
19 normally day-to-day anyway. So my Twitter, my Instagram, my
20 Facebook, my Tumblr, my YouTube, all of that that I normally
21 just don't really pay attention to, I started using, hoping to
22 catch that people would be interested, so, you know, it could
23 further the interest level in what was happening.

24 Q Where -- where are the protests centered at today?

25 A Today, they're usually right in front of the Ferguson

1 Police Department.

2 Q Is that where they've always been focused at?

3 A No.

4 Q Where were they previously centered around?

5 A Two places. It would be either on Canfield, like
6 literally in front of the Mike Brown memorial, or it would be
7 at the QuikTrip on West Florissant, on that whole strip.

8 Q When -- when it was focused on Florissant, did you
9 observe that there was a designated area, a designated protest
10 assembly zone?

11 A No.

12 Q I take it you didn't spend much time there?

13 A No.

14 Q To the best of your knowledge today, is there a
15 designated protest assembly zone?

16 A Would that be in front of the Ferguson Police Department?
17 Are you saying is there one over there?

18 Q Yes.

19 A Not that I know of, no.

20 Q Have you attempted to ask officers that question?

21 A Yes.

22 Q And have you recorded yourself attempting to ask officers
23 that question?

24 A Yes.

25 MR. DAVIS-DENNY: Mr. Bales, would you please put up

1 Exhibit 30? And before you push "Play," go ahead and give me
2 the first --

3 THE COURT: Yeah, just show us --

4 MR. ISAACSON: A little bit better foundation?

5 THE COURT: Yeah.

6 MR. ISAACSON: When and where?

7 THE COURT: Show us the first frame of it.

8 MR. DAVIS-DENNY: Yeah.

9 THE COURT: But don't play the video.

10 MR. DAVIS-DENNY: Okay.

11 THE COURT: Okay.

12 Q (By Mr. Davis-Denny) Do you recognize this first frame of
13 the video --

14 A Uh-huh.

15 Q -- that is Exhibit 30? And we'll have to ask you to
16 answer yes or no to my questions.

17 A Oh, I'm sorry. Yes.

18 Q The court reporter can't take down uh-huhs or huh-uhs and
19 things like that.

20 A I'm sorry. Yes.

21 Q How do you -- how do you recognize this?

22 A I'm the person who's recording this.

23 Q Okay. When did you record this?

24 A Today is Monday. Sunday. Saturday night, Saturday
25 evening.

1 Q And when you refer to Saturday evening, are you referring
2 to --

3 A This past Saturday.

4 Q -- this past Saturday evening?

5 A Uh-huh, yes.

6 MR. DAVIS-DENNY: Your Honor, may we play the
7 exhibit?

8 THE COURT: Any objection?

9 MR. ISAACSON: I don't know that there's any
10 foundation that's relevant at this point to any of the players
11 here. I don't know who this gentleman is, and I don't -- so I
12 don't --

13 THE COURT: Yeah --

14 MR. DAVIS-DENNY: I can ask --

15 THE COURT: -- that objection is -- well, I'll
16 overrule it. You can lay more foundation if you wanted to.

17 MR. DAVIS-DENNY: Okay. Thank you, Your Honor.

18 Q (By Mr. Davis-Denny) Actually, I would like to ask
19 another question, which is: In the area of the protests over
20 the last weekend, what law enforcement agencies have you
21 observed in the area?

22 A Altogether?

23 Q Uh-huh.

24 THE COURT: Over the last -- but just this past
25 weekend?

1 MR. DAVIS-DENNY: This past weekend.

2 A Okay. Shrewsbury, Hillsdale, Wellston, St. Louis County,
3 Florissant, Hazelwood, Ferguson, Ladue, Normandy, Pine Lawn,
4 State Troopers, Missouri Highway -- Missouri Highway Patrol,
5 and that's all that I can think of right now offhand.

6 Q (By Mr. Davis-Denny) Okay. And do you know which law
7 enforcement agency this gentleman is with that's shown in this
8 first frame?

9 A Yes.

10 Q And which law enforcement agency is that?

11 A He's a Ferguson police officer.

12 MR. DAVIS-DENNY: Okay. Could we please play Exhibit
13 30, please?

14 THE COURT: Yeah. And the objection is overruled.

15 (Video played.)

16 Q (By Mr. Davis-Denny) Do we hear your voice in Exhibit 30?

17 A Yes.

18 Q Are you asking any questions about a designated assembly
19 zone?

20 A Yes.

21 Q What are you asking?

22 A "Where is the free assembly zone that we can stand and
23 protest?"

24 Q And did you -- how many officers did you ask that
25 question of?

1 A That day?

2 Q In this particular video. I'm sorry.

3 A Oh, in this video, just two.

4 Q Two?

5 A Uh-huh. Yes.

6 Q And what response did you receive from the two officers?

7 A The first officer said, "There is no free assembly zone.
8 It's all the free assembly zone. It's the U.S. Constitution."
9 The second officer, he said, "There is no free assembly zone."

10 Q Okay. And the first officer who made the comment about
11 "There is no free assembly zone, but this is all a free
12 assembly zone," was he making you keep walking in this area
13 that he said was all a free assembly zone?

14 A Yes.

15 Q How would you describe the level of tension right now in
16 Ferguson between police and protestors based on what you've
17 observed?

18 A It's very high. There's a lot of fear from the side of
19 the protestors. I'm not exactly sure how the police are
20 feeling. They don't necessarily talk to us, but the --
21 there's a certain level of fear and uncertainty because we
22 just never -- I personally never know what is going to happen.
23 You have to be alert, and it's intense, and it drives -- the
24 anxiety levels are sky-high.

25 MR. DAVIS-DENNY: Thank you. That's all I have.

1 THE COURT: Cross-examination, Mr. Shuman.

2 MR. SHUMAN: Yes, Judge.

3 CROSS-EXAMINATION

4 BY MR. SHUMAN:

5 Q Hi. You're Mrs. Dubales? I didn't get your name
6 properly.

7 A Johnetta Elzie.

8 Q I'm sorry. Hi, Johnetta.

9 THE COURT: Now, sir, we do not address any witnesses
10 by their first names in this courtroom.

11 MR. SHUMAN: Elzie. Is it Ms. --

12 THE COURT: We refer to them by their last names with
13 an appropriate title --

14 MR. SHUMAN: I'll make sure to keep that in mind.

15 THE COURT: -- including your friends and people
16 you've never met before.

17 MR. SHUMAN: I'll make sure to keep that in mind.

18 Q (By Mr. Shuman) Ms. Elzie, please, this video that you
19 just testified about, do you have any reason to think that the
20 St. Louis County Police Department was behind the events
21 depicted on the video?

22 A I wouldn't be able to tell you if I necessarily feel that
23 the St. Louis County Police had anything to do with anything.
24 When we asked officers, it just so happened on Saturday these
25 two officers actually stopped to talk. When I talked -- when

1 I tried to talk to officers, St. Louis County and others, they
2 don't talk.

3 Q So is the answer, no, that you don't know that St. Louis
4 County --

5 A Right, so, yes, the answer is no.

6 Q Do you have any reason to think that the State Patrol is
7 behind any of the events that were depicted on that video?

8 A No.

9 Q And what are you in fear of today if you were to go out
10 to Ferguson?

11 A My safety. My life. I've been shot since I've been in
12 the protests. I've been teargassed four times. Anything can
13 happen, and I'm just simply passing out water to protestors.
14 So even just standing there, I'm -- I become a target for even
15 just being in the protest.

16 Q Has anyone threatened you with shooting you in the last
17 couple of days there?

18 A In the last couple of days, no.

19 Q Have any -- any police officer done anything that would
20 put you in fear?

21 A In the last couple of days?

22 Q Yes, ma'am.

23 A Yes.

24 Q What?

25 A Rushing the crowds, using excessive force, grabbing

1 people out of crowds spontaneously. It could have been
2 anyone. I was standing there as a friend. I could have got
3 grabbed even just as relevant as last night, but it wasn't me.
4 It was the people that were next to me that were getting
5 grabbed.

6 Q Who -- who has or has anybody been telling you in the
7 last couple days that you have to keep moving?

8 A Yes.

9 Q Who was telling you that?

10 A The ones that I saw on Saturday were Ferguson police
11 officers, Normandy, and me personally, that was it.

12 MR. SHUMAN: Okay. Thank you, Ms. Elzie.

13 THE COURT: Mr. Isaacson?

14 MR. ISAACSON: No questions.

15 THE COURT: All right. Any redirect?

16 MR. DAVIS-DENNY: No, Your Honor.

17 THE COURT: You may step down.

18 THE WITNESS: Thank you.

19 MS. DEGTYAREVA: Your Honor, the Plaintiff calls
20 Dr. James Ginger.

21 Your Honor, I'm going to be using some paper
22 exhibits. Would the Court like copies at this moment?

23 THE COURT: Yeah. I mean, if you have copies for me,
24 you could go ahead and hand them up.

25 MS. DEGTYAREVA: May I approach?

1 THE COURT: Yeah. Hand them to the clerk. Thanks.

2 Sir, would you step on up here to the clerk right
3 here to be sworn?

4 (Witness sworn.)

5 MS. DEGTAREVA: May I proceed?

6 THE COURT: Yes.

7 **JAMES DONALD GINGER JR., PH.D.,**

8 HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
9 FOLLOWS:

10 DIRECT EXAMINATION

11 BY MS. DEGTAREVA:

12 Q Good afternoon, Dr. Ginger.

13 A Good afternoon.

14 Q What do you do for a living?

15 A I'm a public sector management consultant specializing
16 in -- in public sector agencies, usually law enforcement,
17 sometimes corrections.

18 Q Could you please describe a little bit of what that
19 involves?

20 A Everything from routine management studies to events like
21 this, expert -- subject matter expert testimony.

22 Q And could you please tell us about your educational
23 background?

24 A I have a Ph.D. in public administration from Virginia
25 Tech, a Master of Science in law enforcement from University

1 of Evansville, and a bachelor's in sociology and law
2 enforcement from the University of Evansville.

3 Q Have you ever worked as a law enforcement officer?

4 A I have, yes.

5 Q Could you please describe in what positions you've
6 worked?

7 A I was a sworn law enforcement officer in Evansville,
8 Indiana, from 1977 -- I'm sorry -- from 1969 to 1977. I
9 worked patrol for four years and also worked as a personnel
10 officer and as director of the planning unit.

11 Q And do you have any other professional experience
12 relating to law enforcement or police practices?

13 A Yes, ma'am.

14 Q Could you please describe that, briefly describe that
15 experience?

16 A I'm the former Director of the Southern Police Institute
17 at the University of Louisville. That's a nationwide,
18 nationally recognized training organization for police
19 managers. I also spent several years as Deputy Director of
20 the Police Foundation in Washington, DC.

21 Q And do you have any experience testifying as an expert in
22 cases relating to police practices?

23 A Yes, ma'am, I do.

24 Q Now, turning to this case, who retained you to work on
25 this case?

1 A Originally, I believe the call came from your office.

2 Q So you were retained by the Plaintiff Mustafa Abdullah?

3 A That's correct.

4 Q What was your assignment in this case?

5 A I was asked to take a look at the facts and develop an
6 opinion about whether or not the practices that were

7 apparently occurring on the ground in Ferguson conformed to
8 best practices for police handling of civil disturbances.

9 Q Were you asked to render an opinion about any particular
10 practice that was occurring in Ferguson?

11 A Yes, ma'am.

12 Q What was that practice?

13 A It was referred to as the five-second rule.

14 Q Now, what material did you review in response to this
15 assignment?

16 A I reviewed declarations from Mr. Abdullah, from Mr. Doty,
17 from Mr. Reinstein, and from Ms. Holbrook. I also reviewed
18 the current literature on police handling of civil
19 disturbances. There may have been some other documents that I
20 looked at that I don't recall at this point.

21 Q What, if anything else, did you rely on to form your
22 opinions in this case?

23 A Well, my knowledge, training, and experience of 40 some
24 odd years.

25 Q And were you able to reach any opinions in the case?

1 A Yes, ma'am, I did.

2 Q What opinion did you reach regarding how the -- what
3 we're going to call for ease of reference the five-second
4 rule, how that was implemented in the Ferguson area?

5 A It appeared to be implemented -- I hate to use the term
6 "arbitrarily," but I don't know a better term to use. It was
7 implemented and enforced differently by different officers
8 without any form of -- of uniformity, as best I could tell.

9 Q Now, based on your experience and the materials that you
10 reviewed in this case, were you able to reach any opinions
11 about whether the five-second rule was supported by a written
12 policy?

13 A There appears to have been none, no.

14 Q What did you base that opinion on?

15 A Well, it wasn't available in the record, and it was -- it
16 was enforced so differently between different officers,
17 different agencies that in my experience it indicates
18 something that's not supported by written policy or training
19 or supervision.

20 Q So were you also able to form opinions about whether this
21 policy had been -- whether the officers enforcing the policy
22 had been properly trained on the policy?

23 A It appears --

24 MR. ISAACSON: I don't know that any -- whether
25 they've been properly trained is not pled. It's not an issue

1 here.

2 THE COURT: Yeah. Actually, I think that may be well
3 taken but overruled. I'm going to hear whatever the
4 Plaintiffs wish to present from this witness.

5 Q (By Ms. Degtyareva) Would you like me to repeat the
6 question?

7 A Yes, ma'am, please.

8 Q Were you able to form any opinions regarding whether the
9 officers implementing this rule had been properly trained?

10 A Yes, ma'am.

11 Q What was that opinion?

12 A That the training was either nonexistent or it was not
13 effective given the different levels of implementation by
14 officers at different times in different places.

15 Q And according -- is it in accordance with established law
16 enforcement practices to enforce policies that are not
17 supported by written guidelines or that had not been properly
18 trained?

19 A Absolutely not.

20 Q And why not?

21 A It leads to capricious and arbitrary implementation of
22 what may or may not be an official policy.

23 Q Now, does the need for consistently enforced policies
24 change when law enforcement agencies are dealing with
25 emergency circumstances or unexpected situations?

1 A Well, there are always exceptions for exigent
2 circumstances, but generally, the more serious the events are
3 that are being responded to, the more definite is the need for
4 good preplanning, policy, training, and supervision.

5 Q And are there any guidelines available to law enforcement
6 on how to properly implement consistent policies in exigent
7 circumstances?

8 A Yes, there are.

9 Q If you could just briefly describe what some of those
10 guidelines are.

11 A Well, probably one of the best comes from a fairly
12 reliable source, the FBI Law Enforcement Bulletin, which is a
13 nationwide bulletin from the Federal Bureau of Investigation
14 targeted to police chief executives, such as county sheriffs,
15 chiefs of police, those sorts of folks, and the immediate
16 subordinates of those chief executives, that articulates every
17 month a series of important issues for police to consider as
18 they go about the business of managing the delivery of police
19 service.

20 Q Now, what, if any, opinion did you reach regarding how
21 effective the five-second rule was in crowd control and
22 enforcing public safety?

23 MR. ISAACSON: Let me just make a record. It's
24 completely speculative.

25 Q (By Ms. Degtyareva) This is just based on your opinions,

1 your experience, and the materials you reviewed.

2 A It was implemented differently by different officers in
3 different situations, apparently, based on the declarations
4 that I've read, and as such, it appears to be not grounded in
5 good policy or training.

6 Q Were you able to reach an opinion on whether a rule like
7 the five-second rule, even if it were consistently
8 implemented, would be an effective means of crowd control?

9 A Yes, ma'am.

10 Q And what was that opinion?

11 A Well, based on my knowledge and experience in having
12 served in a police department where there were civil
13 disturbances that we needed to respond to, such a rule would
14 not be effective in controlling any -- any of the types of
15 behavior that law enforcement would be interested in
16 controlling. I can't see a good reason for it.

17 Q And why do you say that?

18 A Well, for example, I think one of the defenses of the
19 five-second rule was that it helped -- it helped avoid outside
20 agitators from embedding with the demonstrators. Logic would
21 dictate that outside agitators can move every five seconds as
22 well as protestors.

23 Q Now, in your over 40 years of experience and in your
24 review of the relevant literature, have you come across any
25 other examples of law enforcement agencies using a rule such

1 as the five-second rule as a method of crowd control?

2 A No, ma'am, I haven't.

3 Q And in your experience, have you come across any research
4 or other evidence that suggests such a policy would be an
5 effective method of crowd control?

6 A Not available in the public literature that I'm aware of.

7 Q Can this type of policy if it is arbitrarily enforced
8 have any negative effects on crowd control?

9 A Certainly.

10 Q And could you please describe what you mean?

11 A Well, as people perceive they're being treated unfairly,
12 the level of agitation rises, the level of demonstration
13 rises, and untoward or unwanted events could occur.

14 Q Now, you mentioned previously an FBI bulletin on crowd
15 management, and I'd like to just show you a copy of that.

16 Mr. Bales, could you please pull up Exhibit 31?

17 Do you recognize this document?

18 A Yes, ma'am. Yes, ma'am.

19 Q What is it?

20 A It's the August 2012 FBI Law Enforcement Bulletin.

21 Q And what is an FBI Law Enforcement Bulletin? What is its
22 purpose?

23 A Again, it comes -- it comes out monthly. Its target
24 audience is police chiefs, police executives, county sheriffs,
25 police chiefs, and that immediate tier under the chief

1 level -- deputy chiefs, lieutenant colonels, those sorts of
2 things.

3 Q Now, in the field of police practices and policy, is this
4 a generally well-accepted source of efficient policies?

5 A Yes, ma'am. It's one of the best that I know of.

6 Q And have you reviewed this document before today's
7 hearing?

8 A Yes, ma'am.

9 Q Now, does this document contain any guidance on the
10 potential negative effect of a policy that is enforced against
11 some people but not against others who are similarly situated?

12 A It does, yes.

13 MS. DEGTYAREVA: And, Mr. Bales, could you please put
14 up page 5 of this exhibit? And could you please highlight and
15 bring up the paragraph in the left-hand column that begins
16 with "The ESIM"?

17 Q (By Ms. Degtyareva) Mr. Ginger, could you please read
18 what this paragraph says?

19 A "The ESIM maintains that crowd violence escalates if
20 people think police officers treat them unfairly." That's the
21 first sentence. If you'd like me to continue?

22 Q Yes, please.

23 A "PSJ," which is a procedural criminal justice theory
24 model, "proposes that group members comply with the law when
25 they perceive that officers act with justice and legitimacy.

1 When a crowd becomes unruly and individuals perceive unfair
2 treatment by law enforcement officers, violence can escalate
3 and a riot can erupt. Recent research finds support for both
4 perspectives and concludes that when police officers act with
5 legitimacy, disorder becomes less likely because citizens will
6 trust and support law enforcement efforts and behave
7 appropriately."

8 Q Based on your experience, training, and review of the
9 literature, is this an accurate statement?

10 A Yes, ma'am.

11 Q Now, you referred earlier to some other crowd control
12 guidelines and model policies that are issued by other law
13 enforcement agencies or police departments, and I'd like to
14 show you a few of those documents as well. These are lengthy,
15 so I'm going to give you paper exhibits.

16 MS. DEGTYAREVA: Your Honor, could I approach the
17 witness with these exhibits?

18 THE COURT: You may.

19 THE WITNESS: Thank you.

20 Q (By Ms. Degtyareva) Do you recognize these three
21 documents?

22 A Yes, ma'am.

23 Q What are they?

24 A The first document that you've handed me, which is
25 PLS026011, is a model policy on civil disturbances from the

1 International Association of Chiefs of Police. The second
2 document, EX022-001, is a operational policy for the Oakland
3 Police Department on crowd control and crowd management. The
4 third document, Exhibit 008-001, are the POST guidelines --
5 POST being an acronym for the Police Officer Standards and
6 Training -- for the State of California in crowd management,
7 intervention, and control.

8 Q Did you previously review these materials in forming your
9 opinions in this case?

10 A Yes, ma'am.

11 Q And what is the purpose of these types of manuals and
12 guidelines?

13 A The purpose of these three, obviously, is to -- is to
14 provide guidance for police executives and police command
15 personnel on implementation of crowd control processes. The
16 model policy program for the International Association of
17 Chiefs of Police, which is one of the major authorities if you
18 will in American policing in terms of policy and policy
19 guidance, is to do the research and promulgate a model policy
20 on high-risk critical tasks in law enforcement, and obviously,
21 since the IACP has a model policy on civil disturbances, they
22 consider that to be a high-risk critical task.

23 Q And are these sources generally well-accepted as sources
24 of proper police practices and policies?

25 A Well, the IACP model policies certainly are. That's sort

1 of the first place one looks when one is working on police
2 policy. I've written two police operations manuals in my
3 career -- one for Evansville, Indiana; one for the San Antonio
4 PD -- and when they're available, these model policies are
5 invaluable. It saves a great deal of research and proofing so
6 to speak.

7 Q Do any of these guidelines or model policies include any
8 reference to using a policy like the five-second rule as a
9 method of crowd control?

10 A Not that I've seen, no.

11 Q Do you know -- in your experience, do you know of any
12 other manuals or guidelines that recommend a policy like the
13 five-second rule?

14 A No, ma'am. Ferguson is the first place I've heard that
15 uses it.

16 Q What do you take from that fact?

17 A Well, it's certainly not in the mainstream of American
18 rubric on responding to civil disturbances and crowd control.
19 Those are outlined in documents such as what we have here, and
20 I didn't mention the Oakland Training Bulletin. One of the
21 things that police agencies habitually do when confronted with
22 a need for new policy is to consult other agencies that have
23 effective policy to see how theirs read and to see if they're
24 adaptable, so that's why the Oakland piece might be so
25 important.

1 Q Now, Dr. Ginger, I'd like to ask you a few questions
2 about the refusal-to-disperse statute. Are you familiar with
3 Missouri's refusal-to-disperse statute?

4 A Yes, ma'am.

5 MS. DEGTYAREVA: Mr. Bales, could you please put up
6 what has been marked as number 205, and could you please cull
7 out the text of the statute?

8 Q (By Ms. Degtyareva) Dr. Ginger, have you previously
9 reviewed Missouri's refusal-to-disperse statute?

10 A Yes, ma'am, I have.

11 Q Is this that statute?

12 A It appears to be, yes.

13 Q And do you have any experience or knowledge regarding how
14 these types of refusal-to-disperse statutes are properly meant
15 to be used by law enforcement?

16 A Yes, ma'am.

17 Q Now, do orders to disperse have to be issued at the scene
18 of an unlawful assembly or riot?

19 MR. ISAACSON: At this point, I think we're
20 completely vague and --

21 THE COURT: Actually, at this point, I think
22 you're -- are you having him testify as an expert witness on
23 what is the law because it sounds like it to me, and I don't
24 need an expert on the law.

25 MS. DEGTYAREVA: I am sorry if my question was

1 unclear. I intended to ask him whether he -- in his
2 experience of enforcing refusal-to-disperse statutes by law
3 enforcement whether they are generally enforced when there is
4 an unlawful assembly or riot, but --

5 THE COURT: And why does it matter how they're
6 generally used? If this is the Missouri law, I mean --

7 MS. DEGTYAREVA: Your Honor, I can move on.

8 THE COURT: Yeah.

9 MS. DEGTYAREVA: If I may ask one question about the
10 statute that --

11 THE COURT: I mean you can. I'm just -- you know, if
12 he's going to start lecturing me on what the law allows and
13 doesn't allow, I'm not going to listen to it, but you can ask
14 him whatever you want, and we'll hear if there's an objection.

15 MS. DEGTYAREVA: Thank you, Your Honor.

16 Q (By Ms. Degtyareva) Now, when law enforcement declare an
17 unlawful assembly, can that declaration last for an indefinite
18 period of time?

19 A Well, by definition, in my experience, if an unlawful
20 assembly is declared and dispersed, it is no longer an
21 unlawful assembly, so the answer to that would be no.

22 Q So if, for example, there was an act of violence and an
23 unlawful assembly were declared on a Sunday night and then
24 that group dispersed by the end of the night, could law
25 enforcement officers still issue orders to disperse the

1 following Monday afternoon?

2 MR. ISAACSON: At this point, I would object to the
3 complete -- incomplete hypothetical.

4 THE COURT: I'll overrule it.

5 A I'm sorry. Would you repeat the question?

6 Q (By Ms. Degtyareva) If an unlawful assembly were
7 declared, say on a Sunday night, and the assembly had
8 dispersed, could law enforcement officers continue to issue
9 orders to disperse the following Monday afternoon?

10 A I believe it would be required, based on my knowledge of
11 police policy and practice, for a second declaration. If
12 indeed something happened, it would require one, so it
13 couldn't be continued indefinitely.

14 Q Dr. Ginger, just a few final questions. I'd like to ask
15 you about the proposed form of a preliminary injunction that
16 the Plaintiff has submitted in this case.

17 Mr. Bales, could you please put up Exhibit #9?

18 And have you seen and reviewed this document before?

19 A Yes, ma'am, I have.

20 Q Now, in your opinion, would this -- actually, sorry.

21 Could you remove that? Okay.

22 So in your opinion, would this proposed form of
23 injunction hamper law enforcement's ability to respond to
24 crowd management or public safety concerns?

25 A I've read it and reviewed it previously, and from what

1 I've read, no.

2 Q Why do you say that?

3 A Well, it still allows effective use of a notice of a
4 declaration of an illegal assembly and a notice to disperse.

5 MS. DEGTYAREVA: Thank you. I have nothing further.

6 THE COURT: Cross-examination --

7 MR. SHUMAN: No --

8 THE COURT: -- Mr. Shuman.

9 MR. SHUMAN: -- for the County.

10 MR. ISAACSON: I have some, Your Honor.

11 THE COURT: Mr. Isaacson.

12 CROSS-EXAMINATION

13 BY MR. ISAACSON:

14 Q Dr. Ginger, you have not served as a police officer since
15 1977; is that correct?

16 A That's correct.

17 Q All right. The industry has changed a lot in those days
18 since then, correct?

19 A Absolutely, yes.

20 Q All right. And you were a police officer concluding in
21 1977 in Indiana; is that correct?

22 A That's correct.

23 Q And where? Evansville? Is that what you said?

24 A Evansville, yes, sir.

25 Q Okay. What was the population of Evansville then?

1 A The population at that time was about 150,000. It was a
2 300-officer department.

3 Q Okay. And surrounding it, was it large enough to have an
4 SMSA?

5 A Yes, sir.

6 Q And what was that?

7 A Probably no more than 200,000. Maybe a little more than
8 200,000.

9 Q And you were contacted to do work by the ACLU with regard
10 to this case, correct?

11 A I believe the original contact came through the Munger
12 law firm.

13 Q Counsel here?

14 A Yes.

15 Q Okay. And you prepared a declaration for them, correct?

16 A Yes, sir, that's correct.

17 Q All right. You've reviewed it before today?

18 A Yes, sir.

19 MR. ISAACSON: Okay. Your Honor, I have paper
20 copies. They are things that have been filed electronically.
21 I don't know if you want copies.

22 THE COURT: What are they?

23 MR. ISAACSON: Document 15-7, Document 15-5, Document
24 15-6, and Document 15-3. I don't know if you want your own
25 copies, or we can --

1 THE COURT: I may already have my own copies, but I
2 have no idea what those numbers mean. So I mean I know what
3 they mean, but I have to look them up. So why don't you hand
4 them up to me, and I'll take an extra copy if you've got them
5 since -- you know, they may be duplicative, but . . . okay.
6 All right. Go ahead.

7 MR. ISAACSON: And, sir, I will -- if I may approach
8 the witness?

9 THE COURT: You may.

10 Q (By Mr. Isaacson) All right. These are Exhibits D, E, F,
11 and G. I'd ask you to take a look at them. First of all,
12 with regard to Exhibit D, is that the declaration you
13 prepared?

14 A Yes, sir.

15 Q Okay. And it has a report, or there's the declaration,
16 and then there are exhibits attached, correct?

17 A That's correct.

18 Q Page 12 of the report has a signature, does it not?

19 A Yes, sir.

20 Q And that was -- you prepared this on August 25th, 2014,
21 correct?

22 A Correct.

23 Q And that's your signature there?

24 A Yes.

25 Q Do you recall what date you were first contacted to

1 prepare this?

2 A I'd have to go back and check the record, but from
3 recollection, it was probably 10 days prior.

4 Q Okay. And when you -- when you prepared it, how -- what
5 was the mechanism for preparing it? Did you type it out? Did
6 you dictate it and give it to somebody to type out, or how did
7 you --

8 A I do my own typing, so I typed an original draft but not
9 in this format.

10 Q Okay. So you submitted it to them, they gave you some
11 comments, and ultimately, you produced a draft; does that
12 fairly summarize what happened?

13 A I think that's a correct assessment.

14 Q All right. Did you proofread it before you signed it?

15 A Yes, I did.

16 Q Okay. Did you want it to be accurate and honest?

17 A To the best of my ability, yes.

18 Q And that's with regard to all the opinions in there,
19 correct?

20 A Yes, sir.

21 Q And did you take care with regard to developing all the
22 opinions in here?

23 A Yes, sir, I did.

24 Q Okay. Were you charging them for your services here?

25 A I was.

1 Q And have they paid you yet?

2 A I hate to say this, but the check supposedly is in the
3 mail.

4 Q Okay. All right. So this was a serious professional
5 endeavor on your part to prepare this; is that fair?

6 A Yes, sir.

7 Q And on page 4 -- strike that. On the bottom of page 5,
8 you list a series of opinions, correct, and they go (a)
9 through (h), correct?

10 A That's correct.

11 Q All right. And you -- the first one talks about --
12 refers to a -- a rule that they can remain immobile for only
13 five seconds or less; is that correct?

14 A Yes, sir.

15 Q All right. Your understanding of that was derived from
16 written materials that were submitted to you from counsel; is
17 that correct?

18 A Declarations and other written materials, yes.

19 Q You didn't interview anybody who was at Ferguson; is that
20 fair?

21 A That's correct.

22 Q You were never there, correct?

23 A Correct.

24 Q You have never talked to any police officers who were
25 there, have you?

1 A No, sir.

2 Q All right. There's been testimony that these guys were
3 working 20-hour days. That doesn't surprise you, does it, in
4 a situation like this?

5 A I've been there and done that myself.

6 Q Okay. It's hard work, isn't it?

7 A It is.

8 Q All right. And sometimes you have to make judgment
9 calls, and it's fair to say you can't review every training
10 material, every policy; sometimes you've got to make a call;
11 is that fair?

12 A That's the nature of police work, yes.

13 Q Okay. All right. And looking at these, (b) through (d),
14 it looks like it's also referring to this five-second rule
15 that you've talked about in paragraph (a); is that correct?

16 A I'm sorry -- (b) through?

17 Q You know, sir, I'm sorry. I'll withdraw that question.
18 Let's go to subparagraph (g), and it says, "Crowd control and
19 incident management techniques employed by the St. Louis
20 County Police and supporting agencies do not comply with the
21 best practices for such activities developed by the Federal
22 Bureau of Investigation, the International Association of
23 Chiefs of Police, and the California Police Officer Standards
24 and Training (POST) organization." Is that what it says?

25 A Yes, sir.

1 Q All right. You don't mention the State Highway Patrol in
2 there; is that correct?

3 A No, sir.

4 Q All right. Did you have any understanding of their role
5 there?

6 A Yes. I had information that they were called in after
7 the initial few days.

8 Q Okay. But you made no comment upon what they were doing;
9 is that fair?

10 A Correct.

11 Q Okay. Did you consider any -- obtaining any other data
12 other than what you were given by counsel?

13 A I considered it, but based on past experience, it's
14 seldom that you get a return phone call from a defendant when
15 you're working for the plaintiff, so I didn't pursue it.

16 Q Did you review any other information in the media about
17 Ferguson?

18 A Yes, I did.

19 Q Okay. Do you recall what you reviewed?

20 A At this time, no. It was not used directly in the
21 report, so I don't recall.

22 Q Let me point you to page 10 of your declaration there,
23 sir.

24 A Okay.

25 Q And it contains -- at the bottom is a paragraph 20; is

1 that correct?

2 A Yes, sir.

3 Q Okay. And the first sentence says, "Ample evidence" --
4 it says "exits"; you probably meant to say "exists," right?

5 A Yes.

6 Q All right. "To indicate that the policy, training, and
7 supervisory failures of the law enforcement agencies involved
8 in response to the demonstrations observed in the wake of the
9 Michael Brown shooting led to capricious and arbitrary
10 application of law enforcement activities." Is that correct?

11 A That's correct.

12 Q All right. Your next sentence says, "'Move along'
13 responses by law enforcement appeared disproportionately
14 focused on minorities." Do you see that sentence?

15 A Yes, sir.

16 Q That's your writing?

17 A It is.

18 Q All right. And you cited three things there, did you
19 not?

20 A Yes, sir.

21 Q Doty declaration, Reinstein declaration, Holbrook
22 declaration, correct?

23 A Correct.

24 Q All right. Let's take them in reverse order. Holbrook's
25 declaration, I believe, is the next exhibit you have in your

1 pile. Is that Exhibit E as in Edward? Yeah, my writing is
2 not the best.

3 A It looks like an E, yes.

4 Q All right. Can you go through that document and tell me
5 where -- anywhere it says, suggests, or infers that "move
6 along" responses by law enforcement appeared
7 disproportionately focused on minorities?

8 A Are you asking for a conclusion by Ms. Holbrook that
9 that's the case?

10 Q I want anything in that declaration of Ms. Holbrook that
11 supports the statement that "move along" responses by law
12 enforcement appeared disproportionately focused on minorities.

13 A At item 16, "The rule to keep moving hurt my ability to
14 express myself." Item 17, "I couldn't be heard while I was
15 being herded." Item 18, "I could not stop and comfort my
16 community members, and I could not stay and gather with them
17 as a group."

18 Q Let me stop you there. What in there tells you that
19 anything was being done disproportionately with regard to any
20 minority?

21 A Well, Ms. Holbrook is a minority, so that's part of the
22 calculation.

23 Q So you took from one instance of one person -- and when
24 did you learn she was a minority?

25 A I'm sorry?

1 Q When did you learn she was a minority?

2 A I believe it was in conference with counsel.

3 Q Was that today?

4 A No.

5 Q Before?

6 A Before, yes.

7 Q All right. So you took one person's experience and
8 concluded that it was disproportionately effected on
9 minorities?

10 A No, sir. Your question was what in there would indicate
11 if I heard you correctly.

12 Q That --

13 A So it's her declaration and the declaration of Reinstein
14 and the declaration of Doty. It -- as a group.

15 Q All right. The word "minorities" is not in there, is it,
16 in her declaration?

17 A No, sir.

18 Q There's no word "disproportionately," correct?

19 A No, sir.

20 Q There is no words in there that make a comparison about
21 how one group was treated compared to another, is there?

22 A Not in this deposition or in this declaration, no.

23 Q Okay. All right. Anything else that would support this
24 statement?

25 A Those are the -- the three or four that I could find

1 immediately.

2 Q Okay. All right. Let's go to Mr. Reinstein's
3 declaration.

4 A Uh-huh.

5 Q Same thing. Find me anything in there that supports the
6 statement that "move along" responses by law enforcement
7 appeared disproportionately focused on minorities.

8 A Counselor, I'll have to apologize to the Court.
9 Normally, when I write these, I include footnotes, but I was
10 asked to remove those, so this is going to take some time.

11 Q Fair enough.

12 A Okay. I apologize.

13 Q And for the record, that's Exhibit F. Is that what
14 you're looking at now?

15 A Yes, it is. It looks like it. It's the Abdullah
16 declaration.

17 Q I want you -- I'm sorry. I want you looking at
18 Mr. Reinstein's declaration. Is that what you have there?

19 A I have -- well, no. I have Abdullah. This is F, or it
20 looks like F. I'm sorry.

21 MR. ISAACSON: May I approach, Your Honor?

22 THE COURT: You may.

23 THE WITNESS: Reinstein -- let's see if I can find
24 Reinstein.

25 MR. ISAACSON: Here.

1 THE WITNESS: Oh, I'm sorry. Yep. Misread. My
2 apologies.

3 Q (By Mr. Isaacson) All right. If you could identify for
4 us anywhere that would support the inference that the "move
5 along" responses by law enforcement appeared
6 disproportionately focused on minorities.

7 A I don't find anything here at this point.

8 Q There's nothing there, is there, sir?

9 A Not that I can see.

10 Q Now let's go to the next one. You also cited Mr. Doty's
11 declaration, and do you have that there, sir?

12 A Yes.

13 Q And is that marked G, as in Gus, Defendant's G?

14 A It must be, yes.

15 Q Okay. And I would have you look through that, but in the
16 interest of time, I'm thinking I can direct you. You can
17 correct me if I'm wrong. Was it paragraph 18? Was that the
18 basis for you citing that?

19 A Again, I apologize for normally those are cited and I
20 think it was a formatting issue that got them removed, but
21 number 18 -- if you'll give me a second to read it.

22 Q Yeah, you can read the whole thing. In the interest of
23 time, I believe that's probably what you were referring to.

24 A I understand that, and I don't want to take the Court's
25 time either. That's normally why I footnote these things, so

1 we can be quick, but I'll just take a second to read 18.

2 Q Review paragraph 18.

3 A Yes, that's part of it, part of the issue.

4 Q Okay. And to your knowledge, was that the support you
5 had for the position that "move along" responses by law
6 enforcement appeared disproportionately focused on minorities?

7 A Part of it, yes.

8 Q Okay. In fact, by the end of that paragraph, he
9 concludes that it wasn't disproportionately focused on
10 minorities; isn't that right?

11 A Well, I don't think so. He said, "However, I also
12 observed the rule occasionally being enforced against older
13 people and whites."

14 Q Read the next sentence where he says, "Ultimately
15 concluded."

16 A Again, that doesn't indicate that it was not enforced
17 against minorities. What it says is, "I ultimately concluded
18 that the way the rule was enforced was largely dependent on
19 which law enforcement officer was enforcing it."

20 Q Yes. So, in other words, he disregarded the inference
21 above and ultimately concluded that the way the rule was
22 enforced was largely dependent on which law enforcement
23 officer was enforcing it; that is what he says, correct?

24 A Yes. And that raises another issue.

25 Q And that sentence does not indicate how those officers in

1 fact treated one group compared to another, does it?

2 A Well, I would disagree with your logic, Counselor. I'm
3 sorry.

4 Q Very well, sir. What does the word "ultimately
5 concluded" -- what does that phrase mean to you?

6 A That sentence needs to be read in conjunction with the
7 rest of the paragraph, I would submit.

8 Q And to you, he's still holding on -- to you, that prose
9 is still holding onto the conclusion where he said based on
10 his initial observations; that's your reading of it?

11 A My -- my reading is that he's identified his observation
12 of disparate enforcement of the rule, and then to complicate
13 matters, he argues that it depended on the officer, which is
14 exactly the sort of thing that good police policy is designed
15 to affect and control. So those are two problems, not just
16 one.

17 Q And that's your reading?

18 A Based on my knowledge and experience and training, yes.

19 Q Okay. You indicate in paragraph 23 -- and I'm on page 11
20 of your declaration, sir.

21 A Okay.

22 Q "Based on my knowledge and experience, I know of no
23 American police department that employs a crowd control tactic
24 similar to the five-second rule." Is that correct?

25 A Yes, sir.

1 Q And when you say five-second rule, what -- what did you
2 mean by that? What was your understanding of the five-second
3 rule?

4 A It was my understanding that law enforcement agencies in
5 charge of the event in Ferguson were not allowing people or
6 were enforcing a rule that people could not stand stationary
7 for more than five seconds, that it wasn't a uniformly
8 enforced rule but that it was being enforced and people were
9 being required to move along and not stay in one position more
10 than five seconds.

11 Q So this was essentially a new concept, a new strategy you
12 hadn't seen before; is that fair?

13 A Yes, sir.

14 Q All right. Are you opposed to police departments trying
15 new strategies?

16 A Not if they're based on good research and good elements
17 from the literature, no.

18 Q Would you ever -- when you were a police officer some 45
19 years ago or whatever it was -- or was it 35?

20 A Well, total career was 45, I guess.

21 Q Okay. Since 1977 would be --

22 A Right.

23 Q Okay. Thirty years.

24 A I started 45 years ago, I guess, is the best way to look
25 at it.

1 Q All right. Sometimes would you get ideas from other
2 departments?

3 A Almost always, yes.

4 Q Have you conducted any interviews or talked with any
5 police departments about whether they have ever employed a
6 strategy like this or similar to this?

7 A Recently, no.

8 MR. ISAACSON: I have nothing else. Thank you.

9 THE COURT: Redirect.

10 MS. DEGTYAREVA: No, Your Honor. I just ask that
11 Plaintiff's Exhibits 8, 22, 26, and 31 be admitted into
12 evidence.

13 MR. ISAACSON: We would just object, Your Honor, as
14 best practices are not relevant to whether some behavior
15 comports with the Constitution.

16 THE COURT: All right. I'll overrule it and receive
17 the documents in evidence, but that does not -- you know, I'll
18 give them such weight as I deem is appropriate.

19 You may step down.

20 We're going to take a 15-minute recess. Court will
21 be in recess for 15 minutes.

22 MR. DAVIS-DENNY: Your Honor --

23 THE COURT: Oh, yes.

24 MR. DAVIS-DENNY: -- before we rest, may I just ask
25 to move to admit Exhibit 30 from Ms. Elzie's testimony? I

1 realized I forgot to do that at the end of her testimony.

2 THE COURT: Exhibit 30 -- what was that one?

3 MR. DAVIS-DENNY: That was the video of the officers.

4 THE COURT: Oh, yeah. Okay. Exhibit 30 is received
5 into --

6 MR. ISAACSON: We'd have the same objection as it's
7 not a party.

8 THE COURT: Yeah, that objection is noted for the
9 record and overruled. So Exhibit 30 is received.

10 All right. We'll take a 15-minute recess.

11 (Court recessed from 2:48 p.m. until 3:06 p.m.)

12 THE COURT: All right. Yes.

13 MR. DAVIS-DENNY: Sorry. Just two more quick
14 housekeeping matters. One is I realized that I had forgotten
15 on Mr. Abdullah's testimony to ask to have Exhibit 25, which
16 was the "know your rights" card that he handed out, admitted
17 into evidence, and so I would ask that that be admitted now.

18 THE COURT: All right. Exhibit 25 is received into
19 evidence.

20 MR. DAVIS-DENNY: Thank you. The second was a
21 question, and that is for the videos that we have that are
22 exhibits, I wanted to see how Your Honor would best -- what
23 the most convenient way is for us to provide those to Your
24 Honor. We could provide it on a thumb drive if that -- if
25 that would --

1 THE COURT: That would be fine. You've also already
2 given me on a disc, on a CD, I guess, some of them -- a DVD --
3 the ones that were --

4 MR. DAVIS-DENNY: That's correct.

5 THE COURT: -- exhibits, two of them, but there's
6 others, so, yeah, a thumb drive is fine.

7 MR. DAVIS-DENNY: Thank you.

8 THE COURT: And I don't need another copy of the ones
9 I've already got.

10 MR. DAVIS-DENNY: Thank you.

11 MR. ISAACSON: And I say this completely without
12 rancor. Did you give copies to us or who in our --

13 THE COURT: Yeah. Do they have copies?

14 MR. DAVIS-DENNY: We are happy to give you copies of
15 the videos, yes. We can make them for you on a thumb drive.

16 MR. ISAACSON: Okay. I didn't have them before,
17 correct?

18 MR. DAVIS-DENNY: Well, you had a couple of them
19 before. I think the ones that we got this weekend, you would
20 not have had.

21 THE COURT: Yeah. So you'll make copies for them,
22 too.

23 MR. DAVIS-DENNY: That's right.

24 THE COURT: Whatever you give me, you'll give them.
25 Okay. And does the Plaintiff have any further evidence?

1 MR. DAVIS-DENNY: I apologize, Your Honor. I now
2 realize we don't have thumb drives; we have CDs. Will that be
3 okay?

4 THE COURT: Yeah, that's fine with me.

5 MR. DAVIS-DENNY: Okay. Thank you. We have nothing
6 further at this time, Your Honor.

7 THE COURT: Okay. And so, Mr. Shuman, does St. Louis
8 County wish to present any additional evidence?

9 MR. SHUMAN: Yes, Judge. Call Captain Jeff Bader.

10 THE COURT: All right. Sir, would you step right
11 over here to the clerk to be sworn.

12 **JEFF BADER,**

13 HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
14 FOLLOWS:

15 DIRECT EXAMINATION

16 BY MR. SHUMAN:

17 Q Would you tell us your personal ID, please, name, job
18 duties?

19 A My name is Jeff Bader. I hold the rank of Captain with
20 the St. Louis County Police Department. I am the Precinct
21 Commander for the Fifth Precinct, which serves our citizens or
22 the City of Fenton Precinct.

23 Q I'll tell you what; you might have to talk up into the --

24 THE COURT: I'm sorry. Yeah, pull it a little closer
25 to you. There you go.

1 A I'm sorry. Is that a little bit better? My name is Jeff
2 Bader. I'm a Captain with the St. Louis County Police
3 Department. I am assigned to our City of Fenton Precinct as
4 the Precinct Commander.

5 Q (By Mr. Shuman) How long have you been with the County
6 PD?

7 A Thirty-one years.

8 Q Tell us when you were first assigned to the Ferguson
9 area.

10 A I received a call from my Bureau of Communications at
11 approximately 3:11 in the morning on the morning of Saturday,
12 August the 16th. They advised me that the Chief was
13 requesting I respond to the staging area in Ferguson.

14 Q Did you have an idea of what you'd be doing in Ferguson?

15 A No, sir.

16 Q How did you find out what you'd be doing?

17 A Upon arrival at about -- well, it was about 4:00 by the
18 time I got there. I contacted Chief Belmar, at which point he
19 instructed me to help get things organized around the staging
20 area.

21 Q What did that mean?

22 A When I arrived, we were still operating with portable
23 generators on the -- the command vehicles for the Highway
24 Patrol, for the St. Louis County Police Department, for the
25 fire departments that had responded, St. Louis City. They

1 weren't operating out of a fixed structure. I took it to mean
2 at that point that he wanted me to help get the situation
3 organized as part of an Incident Command System, Unified
4 Command type structure. So throughout the day, we located an
5 office space that was available, made sure the power and water
6 was running to that, located electricians that could provide
7 the power feeds necessary to get the command vehicles that
8 were there on AC current and get the generators turned off,
9 and just basically organized the staging area, command post
10 area.

11 Q Did you have any role in forwarding -- I don't want to
12 use the incorrect term but like tactical operations of what
13 was -- what the police would do in Ferguson?

14 A Not on that first day. The first day was primarily just
15 organizing things.

16 THE COURT: Organizing things with regard to the
17 police command center?

18 THE WITNESS: Yes. Starting to get -- by that time,
19 I think everyone was aware we were going to be there a
20 significant period of time and that we needed to get the
21 resources in place to help stabilize the situation.

22 Q (By Mr. Shuman) Was the Highway Patrol on-site when you
23 arrived?

24 A Yes. When I arrived, obviously, that was on Saturday,
25 and among the instructions Chief Belmar gave me is that my --

1 my counterpart with the Highway Patrol would be Lieutenant
2 John Enderle, and he stressed to me that the Highway Patrol
3 was still in charge of the overall scene and that we were
4 there to provide whatever and any assistance that we could.

5 Q Did you know Captain Ron Johnson?

6 A I did not. I knew that he had been appointed in charge
7 of it, and other than working with him on a couple of details
8 throughout the last several years, I did not know him
9 personally.

10 Q Well, what was your understanding of your obligation, if
11 you had one, to follow the commands of Captain Johnson on the
12 scene at Ferguson?

13 A As far as my understanding was -- is that Captain Johnson
14 was appointed by the Governor to be in charge of the overall
15 operation and security of this event and that the other
16 agencies, including ours, were there to assist him by
17 providing whatever resources we had available to us.

18 Q So on the days following the 16th, did you have occasion
19 to take part in making operational decisions?

20 A Yes. After the first day, you know, the -- the basic
21 structure of the Unified Command, the Incident Command System,
22 is that the various agencies involved sit down and tabletop
23 and try to come up with operations plans, issues that work,
24 things that don't work, supplies, logistics and things like
25 that.

1 Q Which were the various departments that were actively
2 involved?

3 A Primarily, the major departments that were involved in
4 those type of discussions would have been the Highway Patrol,
5 St. Louis County, and the City of St. Louis.

6 Q Would you say they all had equal voices in the
7 development of operational plans?

8 A I think that when we talk about operational plans
9 everybody's voice was welcome, but, you know, as with all
10 things, there has to be an Incident Commander, there has to be
11 one person in charge or one agency in charge, and they make
12 the final call on the decisions of the things that we're going
13 to do and the things that we're not going to do.

14 Q And in the situation that you're talking about, who --
15 who was that final decision maker?

16 A The final -- during my entire time involved with this
17 operation, Captain Johnson was -- was always identified as the
18 overall scene commander.

19 Q When he'd give a command, did everybody have to follow
20 them?

21 A When he would give a command, everybody would follow it
22 because that's the way we do combined operations like that.
23 The Incident Commander accepts feedback from everybody, but
24 their rule is -- or their, you know, decision is ultimately
25 the rules we follow.

1 Q So are you familiar with an operational plan in Ferguson
2 involving keeping protestors moving?

3 A Yes.

4 Q Describe to me what that meant to you.

5 A One of the discussions that we had was what were the
6 flash points, what would cause problems to develop, and
7 typically, what we had seen over the several days that this
8 operation had been ongoing is that whenever the protestors
9 became static in one location, crowds would tend to gather
10 around that one location, and inevitably, whenever large
11 crowds would develop, problems would begin to develop, both
12 with pedestrians ending up out in the middle of the street,
13 scuffles breaking out within the crowd, each voice trying to
14 be heard, those types of things. So we looked at the fact
15 that if we could keep the protestors moving, then maybe we
16 could eliminate some of those problems that developed through
17 stationary protests.

18 Q Let me stop you for a second, Captain. You used the word
19 "we"; who are the different people that you're talking about?

20 A Oh, just the -- you mean personnel or agencies?

21 Q Well, both personnel and --

22 A Okay. The discussions were held between myself,
23 Lieutenant Scott Melies with our department -- I believe she's
24 a Major -- Renee Kriesmann with the City Police Department,
25 some members of the Highway Patrol staff that were there,

1 Lieutenant John Enderle. The plan was basically forwarded up
2 through the chain to Captain Johnson that we begin a process
3 where instead of trying to prevent the protestors we allow
4 them to continue their peaceful protest. We would encourage
5 them to stay on the move instead of congregating in one
6 location.

7 Q Do you happen to know which department first came up with
8 the idea of keeping the crowd moving?

9 A Originally, when we were thinking of trying to develop
10 solutions to this, it was St. Louis City that came up with the
11 original idea based on some success that they've had with
12 those type of operations at their Annie Malone Parade. At
13 some point, somebody had mentioned that it was possibly a
14 tactic that the New Orleans police used down during Mardi Gras
15 events to help keep the crowds from gathering in one location
16 and becoming unruly.

17 Q Do you personally know how this was communicated to
18 Captain Johnson, or was it communicated to Captain Johnson?

19 A I do not know that personally how it was. You know, I
20 was part of the discussion, you know, where it was brought up
21 to him, and I know that it was discussed during that time and
22 after I left.

23 Q Did the plan get implemented?

24 A Yes, the plan was implemented.

25 Q And who gave the final command to implement the plan?

1 A It would be Captain Johnson's decision.

2 Q Would it have been implemented by the County Police had
3 Captain Johnson not okayed it?

4 A I do not know the answer to that one. That would be -- I
5 was not in charge of the scene, so . . .

6 Q Were you given any directions about the details of what
7 officers were supposed to do with regard to the plan?

8 A Just the broad guidelines that we were going to keep the
9 crowds moving and not allow stationary -- not necessarily not
10 allow but keep the crowds moving, encourage them to keep
11 moving, discourage people from gathering in one spot because
12 when we had stationary protests, crowds began to gather and
13 that's when our flash points would erupt.

14 Q What authority did the County Police have to make
15 operational decisions on its own?

16 A During this operation, our -- we were in a support role.
17 We can only provide suggestions and offer input, but the final
18 decision would be the Incident Commander.

19 Q Which was who?

20 A Captain Johnson.

21 Q Uh-huh. Now, how was the plan to keep the crowd moving
22 communicated to the street officers that were working in
23 Ferguson?

24 A During the roll calls, the officers would be briefed on
25 what the operational plan guidelines were going to be for

1 their shift, and we would explain that -- it was explained to
2 the officers at roll call and the supervisors at roll call
3 that we wanted to keep the crowds moving, that the -- we would
4 discourage them from standing in a single location and that
5 they were to use a lot of discretion as far as being very
6 tolerant because we didn't want to be the flash point.

7 Q So how was -- I know you used the word "we" again, so I'm
8 going to ask you to be as specific as you can. What happened
9 at roll call? And then how commands were handed down.

10 A Typically, the roll calls that I was involved in, the --
11 each of the three major jurisdictions that were there -- the
12 City Police Department, usually, Chief Sam Dotson, the County
13 Police Department, Jon Belmar, and then either Captain Robbin
14 or -- I'm sorry -- Captain Johnson or any other member of the
15 ranking Highway Patrol there would speak about general tones
16 about what we were going to do. Then I would be introduced as
17 the person who was going to explain to them the plan for that
18 day's activity.

19 Q Okay. Were the officers -- now I'm asking about the plan
20 to keep the crowd moving. Were the street officers told that
21 they had to enforce this all the time?

22 A No. In fact, the instructions that I gave during the
23 roll calls that I attended and that I presented the
24 information is what the officers were told is to use a lot of
25 discretion in their contacts with the crowds. We stressed to

1 them time and time again don't take an action if that's going
2 to result in being a flash point that's going to cause
3 problems. We were told that or I instructed them that the
4 orders I was given is that we wanted to keep the crowd moving
5 but not to the point that we caused problems. They were given
6 a lot of discretion. You know, if they felt like the person
7 needed several minutes or even longer than that to make up
8 their mind, then to give it to them. Don't be hasty in their
9 judgment. In fact, some of the exact words that were used is
10 that these police officers on the scene are street officers
11 every day of the week. They have discretion thrust upon their
12 shoulders every hour they're at work. And that we were
13 encouraging them to use that same level of discretion to take
14 action when they felt like it benefited the better good, but
15 that if they felt like a delay of any official action would
16 have that same effect, then not to take official action if
17 they didn't think it was warranted.

18 Q Did Captain Johnson authorize the use of discretion?

19 A Yes.

20 Q How long did this plan remain in effect?

21 A It was in effect from the time that it was initiated
22 until when operations pretty much ceased.

23 Q Do you believe that the County Police are under orders
24 today to enforce the plan?

25 A I have not been told anything different.

1 Q Meaning what?

2 A That if I were to be sent up there today I would use that
3 same plan as of now, that we would want to keep the protestors
4 moving if possible.

5 Q Are the officers currently requiring the crowd to move?

6 A They're not having those issues right now. From what I
7 can tell, there's a contingent of both the Highway Patrol and
8 the St. Louis County Police that continue to provide services
9 to what we call the West Florissant corridor. They've had
10 some protests, but they have not had to get involved in any
11 directing of the crowd to move as far as I know.

12 Q Do you know what Captain Johnson's role is today? Does
13 he go to the scene?

14 A I haven't been back up there since operations ceased
15 except for Tuesday of last week when I was the duty officer
16 for the department and I responded up there to an issue then.
17 He wasn't, for all intents and purposes, in charge of that
18 scene.

19 MR. SHUMAN: That's all the questions I'll have.
20 Thank you, Captain.

21 THE COURT: Cross-examination.

22 CROSS-EXAMINATION

23 BY MR. REHN:

24 Q Good afternoon, Captain Bader. So if I understand
25 correctly, you arrived on the morning of Saturday,

1 August 16th?

2 A That is correct.

3 Q And you were at the command center?

4 A Yes, sir.

5 Q Where was that located?

6 A It was at Northland Shopping Center at Lucas and Hunt and
7 West Florissant.

8 Q How far was that from the main area where the protestors
9 were walking?

10 A About less than a quarter of a mile through what we would
11 call the initial boundary of the area.

12 Q And one thing you mentioned when you were talking about
13 operational decisions was the need to avoid flash points.

14 A Uh-huh.

15 Q When during the day had flash points generally been
16 observed?

17 A Typically, whenever -- our biggest concern for flash
18 points would be -- excuse me -- when groups started to gather.
19 It seemed as long as people were on the move up and down the
20 sidewalks, you know, they were allowed to peaceably protest.
21 Nobody interfered with them. But what we noticed throughout
22 the history of this event is that whenever groups of people
23 became stationary, the crowd would tend to grow, and as the
24 crowd grew, the problems that came with the crowd also grew.
25 Eventually, the crowds exceeded the ability of the sidewalks

1 to hold them, and people would end up in West Florissant
2 street itself. The vehicular traffic going by had not been
3 rerouted, and the streets hadn't been closed off, so you had a
4 lot of extreme danger with vehicles doing, you know, 25, 30,
5 40 mile an hour through an area where there was a higher than
6 normal amount of pedestrian congestion going on.

7 These -- of course, whenever large groups are allowed to
8 gather, people are entitled to their own opinion, and
9 sometimes within these large groups, we would have people with
10 differing opinions about what they could and could not do,
11 even within the protestors themselves, and these large groups
12 would then sometimes become unruly, and the end result after
13 that is that we would have what we call the flash point on our
14 hand, which was simply a problem would develop that we would
15 be forced to respond to and help to resolve.

16 Q And what time of day did that happen?

17 A Typically, those types of events started off very seldom
18 in the morning. You know, when I talk morning, I'm talking
19 6:00 a.m. to 10:00 a.m. From 10:00 a.m. on or even -- just a
20 lot of it depended on how many people there were on the
21 street, how many people were protesting, how many people were
22 just going about their daily activities. Typically, those
23 types of activities would pick up speed, pick up steam, so to
24 speak, frequency, throughout the day and usually by night were
25 everything we could handle and then die off in the early

1 morning hours and pick back up.

2 Q Now, you said that you participated in some operational
3 discussions and then a plan was forwarded. You said it would
4 be forwarded up the chain.

5 A Yes, sir.

6 Q So was the plan to tell protestors to keep moving first
7 formed in those operational discussions that you participated
8 in?

9 A Yes.

10 Q And then that plan -- your understanding was that it was
11 forwarded up ultimately to Captain Johnson?

12 A Yes, sir.

13 Q Now, how do you know that it was forwarded up to Captain
14 Johnson? Were you present when the plan was communicated to
15 him?

16 A Yes, sir.

17 Q And did you participate in communicating this plan to
18 him?

19 A Yes, sir.

20 Q And did you agree with this plan? And you had
21 participated in formulating it?

22 A I thought that at that point in time it was a solid plan
23 and that, you know, that's why we forwarded it up. We don't
24 forward up what we think are bad ideas.

25 Q But you had participated in and agreed with this plan

1 being proposed?

2 A I had been advised of the plan and participated in the
3 discussions about it and forwarded on what I thought was -- I
4 forwarded on my ideas on the plan to Captain Johnson.

5 Q And when Captain Johnson agreed with the plan, do you
6 remember what exactly he said the plan would entail?

7 A No. To quote him exactly, I don't know.

8 Q I believe you described in your direct testimony that at
9 roll call the general plan would be communicated to keep the
10 crowds moving and then you would communicate more specific
11 directions to the officers?

12 A Yes. Usually, the senior ranking officials on the roll
13 calls would speak first, and then at some point, you know,
14 Captain Johnson would say that or whoever was running the roll
15 call would say that "Captain Bader is here, and he'll brief
16 you on the details of the activities."

17 Q And did you say your primary instruction was to enforce
18 this policy to keep the crowds moving at the discretion of the
19 individual officers?

20 A I wouldn't say that was our primary objective during roll
21 calls. There was a lot of issues that were normally discussed
22 during roll calls -- everything from trash pickup to relief to
23 equipment, and so that idea -- any ideas that were forwarded
24 out or operational plans were forwarded to the officers during
25 roll call.

1 Q But with respect to this policy in particular, was it
2 your communications to the officers that the plan was to keep
3 the crowds moving and the officers should exercise discretion
4 in how to do that on an individual basis?

5 A Yes. I was directed by Captain Johnson to provide that
6 information to the officers and the supervisors at roll call.

7 Q Did you discuss with the officers the particular
8 requirements of the Missouri refusal-to-disperse statute?

9 A I did not, no.

10 Q Were you aware that the Missouri refusal-to-disperse
11 statute was the legal authority for this operational plan?

12 A Yes, I was.

13 Q And did you discuss with the individual officers the need
14 for there to be an unlawful assembly or a riot before they
15 instructed the crowds to keep moving?

16 A I was not part of that discussion, no.

17 Q But you were the one communicating directions to the
18 officers at these roll call meetings?

19 A Not all of the -- not all of the roll calls and not all
20 of the instructions, no.

21 Q Did you hear anybody communicate to the officers at any
22 roll call meeting that they should not enforce the
23 refusal-to-disperse statute unless there was an unlawful
24 assembly or a riot?

25 A No.

1 MR. REHN: No further questions.

2 THE COURT: Mr. Isaacson, questions?

3 MR. ISAACSON: No questions, Your Honor.

4 THE COURT: Any further questions, Mr. Shuman?

5 MR. SHUMAN: Yes. I'll be very brief.

6 THE COURT: Yep.

7 REDIRECT EXAMINATION

8 BY MR. SHUMAN:

9 Q Captain, does the County Police still believe that it's
10 under the authority of Highway Patrol?

11 A Yes.

12 Q Is there anything about -- anything that the County
13 Police can do in Ferguson operationally without the express
14 okay of the Highway Patrol?

15 A No.

16 Q When the plan for keeping the crowd moving was presented
17 to Captain Johnson, had he said he doesn't like it, do you
18 know what the County Police would have done?

19 A We would not have implemented that plan out without his
20 approval.

21 MR. SHUMAN: That's all. Thank you.

22 THE COURT: All right. Anything further?

23 You may step down.

24 Mr. Shuman, you may proceed.

25 MR. SHUMAN: And that's the end of the County's case,

1 Judge.

2 THE COURT: All right. Then, Mr. Isaacson, does the
3 State wish to or the State Defendant wish to present evidence?

4 MR. ISAACSON: Replogle. Yes, Your Honor. Let me go
5 get him.

6 THE COURT: All right. Sir, would you step right
7 over here to the clerk to be sworn?

8 (Witness sworn.)

9 MR. ISAACSON: If I may proceed, Your Honor?

10 THE COURT: Yes, please.

11 **DANIEL ERIC CALDWELL,**

12 HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
13 FOLLOWS:

14 DIRECT EXAMINATION

15 BY MR. ISAACSON:

16 Q All right. Could you state your name for the record,
17 please?

18 A Daniel Caldwell.

19 Q And how are you employed, sir?

20 A With the Missouri State Highway Patrol.

21 Q How long have you been with the Missouri Highway Patrol?

22 A Coming up on 25 years.

23 Q Okay. What are your current duties, sir?

24 A I am assigned to Troop C Headquarters, and I am the
25 Troop C St. Louis SWAT Coordinator.

1 Q Okay.

2 THE COURT: The what? Troop C what?

3 THE WITNESS: St. Louis area.

4 THE COURT: Yeah. You said, "I'm the" --

5 MR. ISAACSON: He said SWAT.

6 THE COURT: Did you say SWAT coordinator?

7 THE WITNESS: Yes, ma'am.

8 THE COURT: Okay. Thank you.

9 MR. ISAACSON: And try and keep your voice close to
10 the mike there, sir.

11 THE WITNESS: Oh, okay.

12 Q (By Mr. Isaacson) Pursuant to your duties with the
13 Patrol, were you assigned to Ferguson, Missouri?

14 A I was.

15 Q When did that happen?

16 A The evening of August 10th.

17 Q Okay. And did you proceed there with your team?

18 A I did.

19 Q Okay. And how many people -- and when I say team, that's
20 a SWAT team, correct?

21 A Correct.

22 Q All right. How many individuals were with the SWAT team
23 at that time?

24 A Twenty members.

25 Q And when you got there, what shift were you assigned to

1 work?

2 A Late evening through the midnight.

3 Q Okay. And it's fair to say the role of the Patrol
4 changed over the course of time while you were there; is that
5 correct?

6 A That is correct.

7 Q All right. We've heard testimony on things in dispute.
8 The Patrol took the lead role on the 14th; is that correct?

9 A Yes.

10 Q And that was a Thursday?

11 A Correct.

12 Q All right. You were there from the 10th through the
13 13th, correct?

14 A Correct.

15 Q What's -- what were your duties then?

16 A At that time -- at that time, we were assigned to assist
17 St. Louis County and the patrolling of the crowd and the
18 violence that was taking place.

19 Q How would you start a night?

20 A We -- the central area that a lot of the protesting was
21 taking place -- the large crowds would gather at the QuikTrip
22 at West Florissant and Northwoods or Northwinds. That was the
23 QuikTrip that was burnt down. So we would assemble there and
24 try to monitor the crowd.

25 Q Okay. Sir, we've put up for you Plaintiff's Exhibit 27,

1 which I believe is in evidence, and you talked about a QT, I
2 believe; is that correct?

3 A Correct.

4 Q And is that pictured there?

5 A Yes, it is.

6 Q All right. And that's located at the intersection of
7 West Florissant and -- what's the cross street there?

8 A Northwinds.

9 Q Okay. And you can see the "N" or "O" on that street in
10 the upper right-hand corner; is that correct?

11 A That is correct.

12 Q All right. And so, basically, would you -- would the
13 SWAT team patrol, or were you waiting for assignments to
14 situations?

15 A We were -- when we arrived at the -- we were assigned to
16 the location. We responded to that area where there was a
17 large crowd, a large crowd.

18 Q All right. When you first got there on the 10th, what
19 time about did you start working?

20 A The 10th was late afternoon. Our role on the 10th was
21 when the looting was taking place on the evening of that, on
22 the 10th.

23 Q Describe what you saw that night with regard to the
24 looting you just mentioned.

25 A When we arrived at that area on West Florissant, calls

1 for service were being given out for particular stores with
2 subjects running into the stores, breaking the windows,
3 entering those stores, and taking property out of them.

4 Q Would you -- did you respond to some of those locations?

5 A We did.

6 Q Where do you remember going that first night?

7 A We went to the Family Dollar, the Walgreens, the Walmart.
8 Some of those locations, we returned to as well.

9 Q Okay. I'm getting fatigued. What's the first one you
10 mentioned?

11 A Family Dollar.

12 Q Okay. Where is that on 27?

13 A That is going to be further down at West Florissant and
14 Chambers Road.

15 Q Okay. So maybe we can give some background here. On
16 this diagram, up is north, correct?

17 A Correct.

18 Q All right.

19 A It would be further north.

20 Q Okay. And we don't have a legend there, but, okay, so
21 down is south, left is west, right is east, correct?

22 A Correct.

23 Q All right. So the first location you just mentioned was
24 Family Dollar, and so was that south of the QT?

25 A That would be north of the QuikTrip. It's off the

1 screen. For the photo you have up, it's further north of
2 Northwinds at the Chambers intersection.

3 Q Okay. And -- all right. Where -- where were some of the
4 other -- show us on the map, or you can just point.

5 A On the map picture currently, the -- for the evening of
6 Sunday, the 10th, the looting was taking place further up on
7 West Florissant.

8 Q So those areas weren't pictured on this map; is that
9 correct?

10 A Correct.

11 Q So it's further north?

12 A Correct.

13 Q Okay. All right. What other locations did you see get
14 looted that night, that first night?

15 A The Walgreens that's at the intersection of Chambers and
16 West Florissant. Further north on West Florissant was the
17 Walmart. Our team responded to those three locations that
18 particular evening.

19 Q Do you remember any other locations from that first
20 evening?

21 A We had reports of Foot Locker, I believe it was, that was
22 looted, and some other -- a beauty store was looted, but we --
23 our team specifically did not go to those locations.

24 Q Did you encounter any violence from any protestors that
25 first evening?

1 A No, I did not.

2 Q All right. Tell me about the next couple of nights.

3 Let's go the 11th through the 13th. What sort of activity
4 were you dealing with in those nights?

5 A The 11th through the 13th is where at the QuikTrip on the
6 map at Northwinds is where the crowds would start to
7 accumulate and grow large. We were there, responded to those
8 areas to try to keep the roadways open and to monitor their
9 actions.

10 Q At some point, QT sustained some serious damage, correct?

11 A Correct.

12 Q Was that before you got there or after?

13 A That would have been in the -- I was not there when it
14 was on fire, but it was the -- I believe the evening or early
15 morning hours of the 10th.

16 Q Okay. All right. You saw the before and after picture
17 anyway?

18 A Yes.

19 Q Okay. The damage was significant, was it not?

20 A I believe it was a total loss.

21 Q Okay. All right. What else do you remember from those
22 first three nights?

23 A We heard various gunshots throughout the area. Sometimes
24 they were directed in our -- directed towards us. Sometimes
25 we were not too sure what direction they came from. During

1 that time, while the crowds were there, we encountered people
2 throwing objects at us.

3 Q What sort of objects?

4 A Anywhere from anything they could find on the ground,
5 rocks, bricks, bottles, glass bottles. Then at times just
6 full water bottles were being thrown at us as well.

7 Q So that was going on over the course of those three
8 nights?

9 A Correct.

10 Q All right. We get to Thursday, the 14th, and it's your
11 understanding the Patrol became the lead agency; is that fair?

12 A That is correct.

13 Q All right. The 14th went relatively well and was
14 peaceful, was it not?

15 A It was.

16 Q All right. The next night, did it go as well as the
17 14th?

18 A No, it did not.

19 Q All right. What do you remember from the 15th? What's
20 the first thing you had to deal with as a member of the SWAT
21 team?

22 A First thing, we had reports of officers at the McDonald's
23 on West Florissant by Ferguson. Officers at that location
24 were being surrounded by a large crowd of people. Rocks and
25 debris were being thrown at their vehicles and them while they

1 were standing outside of the car.

2 Q All right. And we have the famous golden arches on the
3 map, don't we?

4 A That is the correct McDonald's.

5 Q And that's the McDonald's we're talking about?

6 A Yes.

7 Q And that's pretty much at the intersection of Ferguson
8 and West Florissant; is that accurate?

9 A That is accurate.

10 Q Okay. So did you respond to that McDonald's?

11 A Yes. We responded to the intersection of Ferguson and
12 West Florissant, and we formed a line at that location.

13 Q And what -- once you got -- what happened next?

14 A I asked that the radio command post have the officers in
15 the McDonald's area to pull out of that area because they
16 were -- the objects were still being thrown at them. So we
17 pulled those officers out of that area, and then they
18 responded behind our line of officers.

19 Q What sort of objects were being thrown at them when you
20 gave that order?

21 A It was anything on the ground, again, rocks, bricks,
22 glass bottles. Some of the vehicles sustained damage as well
23 as, as the officers' vehicles were pulling away, subjects were
24 hitting and kicking the vehicles.

25 Q What were the numbers of the crowd you were dealing with

1 at that point in time? What's your best estimate?

2 A Several hundred to a thousand.

3 Q After you -- what happened next?

4 A We held the line, and I notified our command post of the
5 situation, and at that time, we were told for all officers to
6 pull out and to return back to the command post.

7 Q Okay. And when you say you are holding the line, that
8 means you're essentially standing there?

9 A Correct. Officers formed a line the width of West
10 Florissant from curb to curb. We had a line of officers
11 there. Once we had all the officers who were in front of us
12 around the McDonald's pull out, all officers were no longer in
13 that area, then we were told to respond back; all officers to
14 respond back to the command post.

15 Q And when you are holding the line, how far back is the
16 first line of the crowd?

17 A I would say approximately 20 yards, right about where you
18 are.

19 Q Very well. After you pulled back that night, what's the
20 next thing that happened that evening?

21 A The crowd became or we received information that the
22 crowd was becoming more agitated. It had not stabilized. We
23 were then shortly thereafter told to respond back to the area.

24 Q Okay. And where did you go?

25 A We left the command post, proceeded north on West

1 Florissant to just before the intersection of Ferguson; I'd
2 say approximately 30 to 40 yards south of the intersection,
3 and we formed another line of officers there and monitored the
4 situation.

5 Q And I don't know if we've established this yet. The
6 command post was in a mall that's not on this diagram, but
7 it's to the south, correct?

8 A Correct.

9 Q Does West Florissant sort of curve around at that
10 point --

11 A It does.

12 Q -- to go -- would that be east?

13 A From Lucas and Hunt, it goes north from that location.

14 Q All right. And there's a Target there now?

15 A Yes, sir.

16 Q I mean a Target store.

17 A Correct.

18 Q All right. So you back to that, and how -- how far away
19 did you -- when you went back, how far away were you from the
20 first encounter that evening?

21 A Well, I'd say we were approximately 30 yards from the
22 line of where the protestors were.

23 Q All right. What happened then?

24 A We were monitoring the line. There was verbal commands
25 being given for everybody to disperse from one of our command

1 vehicles. Nobody was adhering to that direction.

2 Q Was there any -- were you taking any sort of violent
3 activity from that crowd?

4 A They were throwing items, but we were far enough back to
5 where they were just hitting the ground in front of us.

6 Q And what sort of items were they, sir?

7 A Rocks, bricks, and water bottles again.

8 Q Okay. What happened then?

9 A The crowd then, shortly thereafter, decided to start
10 looting the Ferguson Market, which is essentially right next
11 to the McDonald's on your diagram. I believe it might --

12 Q Is it to the south?

13 A Yes, just a parking lot south of the McDonald's.

14 Q Okay. And it's a pretty small little store, isn't it?

15 A Correct.

16 Q All right. So they started looting there. What happened
17 then?

18 A We could see subjects were going inside of the store,
19 taking items out. As that was occurring, another portion of
20 the crowd -- the Ferguson Market is west of West Florissant.
21 Then they started to loot the Family Dollar and, I believe, a
22 beauty store on the east side of the intersection, and they
23 were going essentially across the street.

24 Q Okay. All right.

25 THE COURT: So is it a different Family Dollar?

1 THE WITNESS: Yes, ma'am.

2 Q (By Mr. Isaacson) Okay. That's what threw me, too. Are
3 there two Family Dollars?

4 A Correct. There's two locations on West Florissant.

5 Q All right. So what did you see going on once they got to
6 the Family Dollar, the second Family Dollar at Ferguson and
7 West Florissant?

8 A The crowd was chanting louder, and the crowd
9 essentially -- more members -- it appeared more people from
10 the crowd were taking part and going inside the stores and
11 taking out items.

12 Q All right. What did your team do?

13 A At that time, we were given direction to stand down. We
14 could not take action on it, and the looting continued.

15 Q Okay. Where'd you guys go?

16 A We just held our line just south of the intersection.

17 Q Okay. How long did that looting go on?

18 A I can't recall directly, but quite awhile.

19 Q All right. And you're watching all of this?

20 A Correct.

21 Q All right. Did the fact of the looting kind of divert
22 their attention from throwing things at you guys, or is that
23 still going on, too?

24 A That was still going on.

25 Q All right. Again, was it falling short of you?

1 A Yes.

2 Q All right. What's the next incident you recall going to
3 that night?

4 A That night, we received additional calls of looting going
5 on West Florissant further north, around the Chambers area, at
6 which time we had my team along with a St. Louis County team
7 respond by a roundabout way. We took New Halls Ferry. We
8 came down to the opposite side of West Florissant, and we
9 encountered looting going on in an AutoZone, another car
10 place; I think it was like a wheel store. Looting was going
11 on at those two locations.

12 Q All right. Do you remember, as you sit here today, any
13 other events from that Friday night?

14 A As far as looting goes, that was it. There was one more
15 incident that occurred shortly later.

16 Q And what was that, sir?

17 A When we were responding -- as the evening went on and
18 things calmed down, we were heading back to the command post
19 via West Florissant, and we interrupted a looting in progress
20 where the owners or managers of the store were attempting at
21 gunpoint to stop looting of their liquor store.

22 Q All right. What time did your shift end that morning?

23 A 6:00 in the morning.

24 Q Okay. All right. When were you back on the next day?

25 A We were to be back at the command post at 5:00 p.m. the

1 following day.

2 Q All right. And did your team -- they did that?

3 A Yes, sir.

4 Q All right. And so now we're on the Saturday, the 16th.

5 Did you encounter some violence that night?

6 A We did.

7 Q Okay. Tell me the first incident you responded to on the
8 16th.

9 A Similar as to how it started the night before, we had
10 officers on West Florissant in their vehicles patrolling the
11 area. They again began to have objects thrown at them --
12 rocks and bottles and so forth -- at their vehicles. The
13 crowd started to form, and we were asked to respond to that
14 location.

15 Q Once you got there, what did you see?

16 A The -- as we approached, some of it had died down. They
17 saw the police officers or our vehicles responding to the
18 area. The crowd was still large.

19 Q Okay. And I'm sorry, sir. Where are we right now?

20 A We are on -- we are on -- still by the McDonald's on West
21 Florissant.

22 Q Okay. All right. How long were you there for that
23 incident?

24 A Several hours.

25 Q Okay. Do you remember any other incidents that evening?

1 A We just worked towards moving the crowd, dispersing the
2 crowd by moving them north on West Florissant, and as we did
3 that, we continued to encounter items being thrown at us.

4 Q Okay. Do you have any other memory of any other
5 incidents on the 16th?

6 A Essentially, that was -- it was recurring throughout the
7 evening.

8 Q All right. And then on -- let's go to the 17th, and
9 that's the Sunday.

10 A Okay.

11 Q That evening started off with something fairly
12 significant, did it not?

13 A It did.

14 Q All right. Tell us about that. What happened when it
15 started?

16 A We received reports that a large crowd of approximately a
17 thousand protestors were proceeding south on West Florissant,
18 moving towards the Target store, which is the command post.

19 Q Okay. Once you received that information, what did your
20 team do?

21 A We were told to immediately respond to West Florissant
22 from the command post.

23 Q Okay. So West Florissant -- again, you're essentially
24 going back to close to the McDonald's and the Ferguson Meat
25 Market; is that correct?

1 A Just prior to that, yes.

2 Q Yes. And when you say "prior," you mean south?

3 A Correct. By the -- there's an Emerson Electric Company
4 there. It was in that area.

5 Q All right. And Emerson Electric, I guess, just for the
6 record, is sort of in the lower quadrant of the -- what do you
7 call this -- the segment that's there; is that correct?

8 A Yes, sir.

9 Q All right. And there's also kind of a triangular field
10 there, is there not?

11 A Are you referring to the purple triangle or --

12 THE COURT: No. In the -- can you circle? You can
13 circle it.

14 MR. ISAACSON: With the ELMO, I know you can hit it.

15 THE COURT: Yeah. Just do it with your finger. Just
16 circle the part you're talking about and ask him about it.

17 MR. ISAACSON: All right. We're all right.

18 THE COURT: I say it should work. On the screen, it
19 doesn't? Okay. This isn't my normal courtroom.

20 MR. ISAACSON: I shouldn't have washed my hands.

21 We're good. Thank you.

22 Q (By Mr. Isaacson) Okay. So once you got --

23 THE COURT: So you're talking about the triangle
24 south of McDonald's --

25 MR. ISAACSON: Yes.

1 THE COURT: -- right?

2 Q (By Mr. Isaacson) Okay. And that's just bare, empty
3 grass; is that correct?

4 A That is, but the Emerson Electric is actually notated at
5 the farther left bottom. Yes, there it is.

6 THE COURT: So are you saying you were down there
7 where that lower orange triangle is right now by Emerson?

8 THE WITNESS: Correct.

9 Q (By Mr. Isaacson) You're down near Emerson. Okay.

10 A Correct.

11 Q Tell us what happened there.

12 A As we responded in our vehicles, we drove directly in
13 front of the protestors marching that way. They were loud, a
14 very, very large crowd, very loud, and we immediately -- our
15 vehicles started to be struck by various objects.

16 Q What objects do you remember?

17 A Again, we were getting hit with a lot of rocks for sure,
18 bottles, and chanting with their signs and so forth that they
19 made their intentions known that they were heading towards our
20 location.

21 Q All right. And how did that situation resolve itself?

22 A We had several vehicles there with multiple agencies. We
23 threw gas grenades out of the vehicles. Some officers were
24 actually able to get out of the vehicles to do so, and we
25 tried to stop them from proceeding further south on West

1 Florissant. Once they stopped doing that, then we were able
2 to move the crowd back north on West Florissant.

3 Q And when you say you're moving the crowd, what exactly is
4 going on?

5 A We -- once we were able to stop them from proceeding
6 south, we had officers exit the vehicles, and we formed a line
7 of officers across the street, along with our vehicles, and we
8 would slowly walk them back. We probably maintained a
9 distance of 15 yards between ourselves and those people
10 because we had to move slowly because the crowd was so big we
11 had to let people in the farthest back move before we could
12 get the people in the front to move back.

13 Q All right. How long did dealing with this whole incident
14 take?

15 A Oh, an hour or two.

16 Q Okay. Do you remember any other incidents the night of
17 that Saturday?

18 A I remember that as we were moving --

19 Q Yeah. Strike that. I misspoke. I think we're on
20 Sunday. Go on.

21 A I just remember that evening, as we were continuing to
22 move the crowd back, we encountered some things that we had
23 not encountered on the previous nights.

24 Q What was that, sir?

25 A They had placed the keystone landscaping rocks that you

1 would make a landscaping wall out of -- they were placing them
2 across the roadway, approximately two to three high, and
3 during this time, we were still throwing gas, trying to get
4 the crowd to disperse. We had protestors donning or wearing
5 gas masks. We had not seen that before, and we had times
6 where we saw them picking up or attempting to pick up some of
7 the gas thrown at them and they were trying to throw it back
8 at us.

9 Q What happened next?

10 A We were able to disperse the crowd after several hours,
11 and we moved them further north on West Florissant to where
12 the crowds minimized in size.

13 Q I take it dealing with that situation was most of your
14 night's work on the 17th?

15 A It was.

16 Q Okay. Let's go to the 18th. We're on Monday now.
17 What -- do you remember the first place your team went that
18 night?

19 A First place for -- let me recall here. We responded to
20 the intersection of Ferguson again.

21 Q Is that where the McDonald's was?

22 A Correct.

23 Q Okay.

24 A And we were there monitoring the crowd. They were --
25 just a large crowd, again, had formed. They were blocking the

1 road. We had people of -- of the community -- clergy,
2 citizens, and so forth -- who were there trying to help us
3 open the roadway. They were able to do that on their own, and
4 the roadway was opened up.

5 Q Okay. Was there -- was there any violent activity going
6 on at this sequence?

7 A Not at that particular -- no. They were able to -- it
8 started up. We did have some water bottles thrown at us, but
9 there was people actually in that large crowd who immediately
10 started to try to control the situation.

11 Q And that was successful?

12 A That was successful, and then we had a report of a large
13 crowd forming at the QuikTrip there on West Florissant at
14 Northwinds where they needed some teams to respond to.

15 Q All right. Did you go there?

16 A My team went there along with St. Louis County.

17 Q Okay. And what happened there?

18 A We arrived at that location. On that particular day,
19 there was marching taking place, and at that location, there
20 was a steady flow of people walking up on West Florissant,
21 turning around and coming back, and then when we showed up,
22 they were stopping at that intersection of Northwinds. They
23 started to congregate and started to come onto the roadway,
24 and then we were giving them -- verbally telling them over the
25 PA system that they needed to get or walk on the shoulder or

1 walk on the sidewalks and to continue moving.

2 Q All right. Was there any violence as part of their
3 response at that point?

4 A The only thing we had -- we had some property damage
5 occurring. One of the "Yield" signs of the intersection was
6 pulled up, and one of the protestors was walking around with a
7 "Yield" sign.

8 Q All right. Do you remember anything else from that
9 Monday night?

10 A Yes.

11 Q What else do you remember?

12 A As that evening progressed, the numbers grew. They were
13 not listening to our commands to clear the roadway. We were
14 stationary in --

15 Q Where were you exactly when this was going on?

16 A This is exactly at the intersection of Northwinds and
17 West Florissant.

18 Q Okay. So you're close to the QT?

19 A Yes. The QT is right in front of us.

20 Q Okay.

21 A We were holding that area. We started to receive rocks
22 specifically thrown at us. We were telling them over the PA
23 system to stop throwing objects at us and to continue their
24 march. That was not working. They congregated further onto
25 the roadway. There was two Johnny-on-the-Spot portable

1 bathrooms at that location. They were pushed over onto the
2 roadway, blocking it. And we even took -- I had our
3 particular vehicle -- we backed it up further, so we were
4 that -- we were trying to back up, so we weren't in arm's
5 reach of those rocks being thrown, and a very short time
6 later, we received multiple gunshots fired at us, probably a
7 dozen from Northwinds west directly at our vehicles.

8 Q Okay. Do you remember any other sort of violent activity
9 that night?

10 A After that subsided, we responded -- shortly thereafter,
11 we responded to a body that was found laying next to the
12 QuikTrip, on the south side of the QuikTrip, and our team went
13 in there, and a subject protestor was beaten up by somebody
14 else -- we don't know who -- significantly beaten up, and he
15 was unconscious, and we put him in our vehicle, and we took
16 him out and had EMS respond to take care of him.

17 Q Do you remember any other events from the 18th?

18 A That would have concluded it.

19 Q Okay. Your team was off the next two nights; is that
20 correct?

21 A That is correct.

22 Q All right. Your team was never assigned anything with
23 regard to keeping people moving, a five-second rule or
24 anything in that world, correct?

25 A No, we were not.

1 Q You were never even briefed on that; is that fair?

2 A That's fair.

3 Q Based on your observations from the 15th through the
4 18th, was there some sort of consistency with regard to the
5 relationship between the size of the crowd and the level of
6 violence that would occur?

7 A Yes.

8 Q Would you just tell -- describe that for the Court?

9 A As the crowd seemed to grow larger, we'd find people
10 infiltrating the back of the crowd, and then they would start
11 to become unruly and either verbally being more abusive, and
12 then we noticed the items that were being thrown at us were
13 from the back of the crowd, not the people in the front of the
14 crowd.

15 Q Was that a consistent pattern that items were from the
16 back?

17 A Correct.

18 Q And your team wasn't making any arrests pursuant to the
19 dispersal statute or moving people along or anything like
20 that, correct?

21 A No, we were not.

22 Q And while you were there, did you ever receive any
23 instruction with regard to that aspect of operations?

24 A We knew what was going to be taking place, but that was
25 not part of our mission.

1 Q All right. And you heard that thirdhand?

2 A Correct.

3 MR. ISAACSON: All right. I have nothing else from
4 this witness, Your Honor.

5 THE COURT: Cross-examination.

6 CROSS-EXAMINATION

7 BY MR. CLANCY:

8 Q Good afternoon, Sergeant Caldwell. Can you state again
9 what time your shift generally ran in the SWAT team?

10 A Yes. We would be on post by 5:00 p.m., and we worked
11 through until 6:00 a.m.

12 Q Did you ever work during the daytime hours, or was your
13 shift consistent?

14 A Our shift was consistent.

15 Q So you don't have any firsthand knowledge of events that
16 occurred during the day in Ferguson; is that correct?

17 A Correct.

18 Q Okay. And earlier, you were asked whether you were given
19 orders about refusal to disperse and enforcing that statute.

20 As the SWAT team, were you privy to the general roll calls
21 that everyone else was privy to?

22 A One more time, please.

23 Q As a member of the SWAT team, would you attend the roll
24 calls that other officers who might be enforcing general crowd
25 control measures would attend?

1 A Typically, we would not. The road officers would
2 assemble for their assignments for that shift, and then the
3 SWAT officers would be at a different location, and we would
4 be briefed separately.

5 Q So you wouldn't have any firsthand knowledge about what
6 those officers were told regarding enforcement of the
7 refusal-to-disperse statute --

8 A Correct.

9 Q -- is that correct?

10 A Correct.

11 Q You've described a series of events that occurred during
12 your shift, including rocks being thrown at you, et cetera.
13 Did all of these events occur during the nighttime?

14 A During my shift, yes.

15 Q Uh-huh. And, specifically, when you're discussing the
16 events that occurred on the evening of the 17th, what --
17 around what time did those events occur?

18 A Towards midnight hours.

19 Q And you were asked whether -- about a pattern you saw in
20 terms of more violence occurring -- you said generally was
21 with larger crowds?

22 A Correct.

23 Q When you're talking about a larger crowd forming, are you
24 talking about five individuals congregating, 50 individuals
25 congregating?

1 A By the time we were in an area, I would say the crowd was
2 plus or minus from a hundred.

3 Q So when your -- the pattern that you observed was when
4 crowds reached roughly a hundred officers or a hundred
5 protestors at night, then in those situations the violence
6 might occur; is that correct?

7 A That's correct.

8 Q When you were discussing your enforcement on the night of
9 the 18th, you mentioned that when you came across certain
10 large crowds by the QuikTrip and, I believe you said, by the
11 Family Dollar store, you told them to move along?

12 A Correct.

13 Q On what basis did you tell them to move along?

14 A We knew that the assignment of the road officers were not
15 in our area. At that time, they were dealing with the
16 situation at the McDonald's area, and we knew the direction
17 was to keep the crowd moving.

18 Q How did you know that the direction was to keep the crowd
19 moving?

20 A We had heard that the mission for the day shift was to
21 keep the crowd moving.

22 Q Were you told -- had you heard anything else except, "We
23 have to keep the crowd moving"? Were there any guidelines or
24 other specifics about when or how to keep the crowd moving?

25 A We were just told that through the public address system,

1 PA system, that we would be encouraging them to keep moving.

2 Q Were you told that in order to tell the crowd to keep
3 moving you first had to declare an unlawful assembly?

4 A Not that I recall.

5 Q Were you told that in order to keep the crowd moving you
6 had to declare a riot?

7 A We knew -- we knew that to keep the crowd moving, that we
8 did not want them to stop, we would encourage them, "Don't
9 stop," and I do believe the words -- a phrase came out, "You
10 cannot assemble here, and you need to keep moving" is the
11 direction we were given.

12 Q I'm sorry. Maybe my question was unclear. Were you told
13 that in order to tell the crowd to keep moving you first had
14 to declare a riot?

15 A No. We were told that -- for -- to keep the crowd
16 moving. We did not want them to assemble. That's when we
17 noticed that the violence would occur.

18 Q And were you told that when you told the crowd to keep
19 moving you had to tell them to leave or disperse from the area
20 or to just keep them moving?

21 A Just to keep them moving.

22 Q Thank you. And your examination ended and said that you
23 were off the nights of the 19th or 20th; is that correct?

24 A That is correct.

25 Q When is the last time that you have been in Ferguson in

1 your official capacity?

2 A We responded there -- I can't remember -- last week when
3 we had more looting occur. I think that was a Monday evening
4 or a Sunday night, a week or so ago.

5 Q Is it fair to say that the Missouri State Highway Patrol
6 still responds to events in the Ferguson area?

7 A Correct.

8 Q All right. And as far as you know, have you heard any
9 authority that you are to not tell protestors to keep moving
10 anymore?

11 A I have not been told that.

12 Q Is it your understanding that that directive still
13 stands?

14 A I have no knowledge of that.

15 MR. CLANCY: No further questions.

16 THE COURT: Cross-examination.

17 MR. SHUMAN: No cross from the County, Judge.

18 THE COURT: All right. Any redirect?

19 MR. ISAACSON: No, Your Honor.

20 THE COURT: You may step down.

21 You may call your --

22 MR. ISAACSON: May the witness be excused?

23 THE COURT: Yes. You may call your next witness.

24 MR. ISAACSON: Call Major Johnson.

25 THE COURT: Sir, if you'll step right here to the

1 clerk.

2 **J. BRET JOHNSON,**

3 HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
4 FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. ISAACSON:

7 Q And could you state your name for the record, please?

8 A J. Bret Johnson.

9 Q And how are you employed?

10 A With the Missouri State Highway Patrol.

11 Q And what is your current rank?

12 A I'm a Major. I'm the Field Operations Commander.

13 Q How many people in the Highway Patrol are ranked above
14 you, sir?

15 A Two administratively. One operationally.

16 Q And how long have you been with the Highway Patrol?

17 A Over 28 years.

18 Q What are your duties, generally speaking?

19 A As the Field Operations Commander, I command the nine
20 geographic troops, one of which is Troop C, 11 counties in
21 Troop C, and Captain Ron Johnson is the Commander, and I'm the
22 supervisor of those nine, nine troops, including Captain
23 Johnson.

24 Q Generally speaking, what's the Patrol's mission?

25 A Our mission -- we're a full-service police organization,

1 and we provide law enforcement duties throughout the state to
2 include traffic, criminal, gaming. We're actually a state
3 police, but we're still called the Highway Patrol.

4 Q Okay. You enforce state laws?

5 A We do.

6 Q Not city ordinances, correct?

7 A Not city ordinances.

8 Q All right. At some point, you became involved in the
9 situation at Ferguson; is that correct?

10 A I did.

11 Q All right. Where were you when you first learned about
12 that?

13 A I was in Grand Rapids, Michigan, at a conference on the
14 10th and 11th.

15 Q Okay. When -- once you got the call, did you come back?

16 A I eventually did on the 12th. They flew one of our
17 planes up, and I flew back.

18 Q Once you got there, once you got back on the 12th, what
19 was your initial involvement with the Ferguson matter?

20 A On the 12th, I actually came to Troop C and met with
21 Captain Johnson and got a full face-to-face briefing. I had
22 not -- we had only conversed over the telephone prior to that
23 time.

24 Q And Captain Johnson -- what is his rank?

25 A His rank -- he's the Captain. He's the Commander of

1 Troop C.

2 Q Okay. He's one rank below you?

3 A He is.

4 Q Okay. What -- and you've heard testimony; we agree you
5 became the lead agency on the 14th, correct?

6 A That is correct.

7 Q All right. For the couple days before the 14th, what
8 sort of work were you doing at Ferguson?

9 A Just mostly observing. As the Field Operations Major, I
10 make sure that they have the proper assets because we were
11 bringing in uniformed officers and equipment from other troops
12 and my bureau coordinates those to help support Troop C.

13 Q How would you describe the Patrol's role before the 14th?

14 A Before the 14th, it was a mutual agreement. We were
15 supporting in a mutual aid role to St. Louis County and
16 Ferguson PD.

17 Q All right. And that role changed on the 14th. What did
18 that mean in terms of the Patrol's role? What exactly -- how
19 did your role change?

20 A Well, with the -- with the Governor's announcement,
21 Captain Ron Johnson was placed in as the Incident Commander
22 of -- of the incident going on here.

23 Q Okay. And at that point, what was -- what were the
24 goals; what was the job of the Missouri Highway Patrol in
25 Ferguson?

1 A Really, we had -- you know, the Governor was very
2 specific; the Colonel was very specific that we would maintain
3 public safety and also protect civil rights and free speech.

4 Q Okay. Was one of the goals preventing the destruction of
5 property?

6 A It was.

7 Q All right. What sort of shift were you working from --
8 let's say when you first started 'til the 14th.

9 A Yeah, when I -- when I got back from Michigan, I was
10 mostly working days. The Colonel and I both were traveling
11 back and -- back and forth to be here during the day, go back
12 in the evening, and that continued up until the 16th.

13 Q All right. And how did your role change on the 16th?

14 A On the 16th, when the Governor declared a State of
15 Emergency, I prepared myself to come here, and I stayed
16 until -- actually, until the command post was disassembled,
17 and it was moved back operationally to the Troop in the county
18 on the 27th. So I was here from the 16th to the 27th.

19 Q And from the 16th to the 27th, what shift were you
20 working?

21 A I went to nights then because that's when most of the
22 unrest occurred. I was -- I would come on somewhere around
23 11:00 and work until 4:00, usually 4:00 or 5:00 in the
24 morning. We were working about 20-hour shifts.

25 Q And when you say public safety, that also included the

1 safety of the people who were protesting, correct?

2 A That is correct, and that was a specific direction not
3 only from the Colonel but from the Governor.

4 Q Once you were there on nights from the 16th -- let's say
5 the 16th and the 17th -- how are you going about your
6 business? What exactly are you doing?

7 A Well, in the evening, I would go down. You know, we were
8 operating at that point as what I would call a Unified Command
9 between Captain Johnson, Chief Belmar, and then also Chief
10 Dotson from the police department since they were all
11 providing a large contingent of manpower, and so we would
12 normally go down in the late evening together to observe the
13 crowds and what was occurring.

14 Q Okay. After that happened, what sort of work would you
15 do then?

16 A Well, it just -- it depended. We would come up with
17 different strategies. You know, there were lots of -- as
18 you've heard before, lots of violence going on during those
19 nights, and it was our job as command staff to come up with
20 strategies that would help lessen that.

21 Q All right. And you've heard testimony sitting here about
22 how decisions were made and the dialogue that occurred. You
23 roughly agree with what you heard?

24 A I do.

25 Q Okay. And in terms of -- we've heard a lot about, you

1 know, the violence that was occurring and all that sort of
2 thing. Did you also witness similar events, let's say, on the
3 nights of the 16th and 17th?

4 A Yes.

5 Q All right. Tell the Court what you can recall, some of
6 the things you remember from those nights.

7 A Well, there were different exchanges, all on -- that I
8 recall all on West Florissant, mostly in the area of -- of the
9 McDonald's -- rocks, bottles, Molotov cocktails, gunfire.
10 It's -- you know, you've heard the testimony. I witnessed and
11 was involved in -- in observing all of that.

12 Q Okay. We use the term a lot. I don't -- maybe we
13 defined it earlier. What's a Molotov cocktail?

14 A It's a bottle with -- with a flammable liquid inside,
15 with a rag that is lit on fire, and then whenever it crashes,
16 it would -- when it impacts, then it would catch on fire then.

17 Q Okay. And you've heard the testimony regarding people
18 embedding in -- once the group got large; is that correct?

19 A That is correct.

20 Q Now, we've heard it several times. Do you have any
21 disagreement with that?

22 A I don't have any disagreement, no.

23 Q All right. Let's start with this. First of all, has
24 there ever existed a five-second rule?

25 A Never heard of it.

1 Q Okay.

2 A Until I got here today.

3 Q Okay. There was a strategy with regard to keeping the
4 crowd moving?

5 A Yes.

6 Q All right. Now, when info -- information would be given
7 at briefings every night, correct, to start the night?

8 A Yes.

9 Q All right. Who would deliver those briefings?

10 A Captain Johnson, Chief Belmar, Chief Dotson, and then
11 sometimes myself and the Colonel would -- would have some
12 input into the --

13 Q Okay. And did you -- and you were always present for
14 these briefings; is that correct?

15 A Most of them, yes.

16 Q Okay. And --

17 A On the evening shift, not the day shift.

18 Q All right. Now, this idea of keeping people moving --
19 that was -- was that a strategy that was employed?

20 A It was a strategy. Actually, the first time that I heard
21 about it, I think some of -- including some of my staff had
22 discussed it, but when it was presented to Captain Johnson,
23 then he presented it to me, and we discussed it at that point.

24 Q Okay. And what was the purpose? How was that going to
25 help with operations?

1 A Well, we hoped that -- that it was going to minimize the
2 size of the crowds by keeping the protesters and others --
3 this was on public sidewalks. They were -- you know, when
4 they were allowed to congregate and not continue moving, they
5 were pushing out into the streets. It would allow us to -- at
6 that point, we were far enough along we had identified
7 different instigators and those that had been previously
8 arrested, and that gave us an opportunity to visualize them.
9 Some had backpacks. Some had, you know, gas masks. So those
10 that were going to commit violations of the law, we could more
11 readily identify them if they weren't embedded inside the
12 crowd.

13 Q So it enhanced your visibility of everybody in that
14 crowd; is that fair?

15 A That's true.

16 Q Okay. Did it have some benefits for keeping the road
17 clear?

18 A It did.

19 Q And would you explain that?

20 A Well, you heard before. I mean, when you had crowds of
21 200 or more in a lot of these instances, the road was not
22 closed, West Florissant was not closed, and even the nights
23 that it was, it was open to emergency traffic and also local
24 traffic, and they would spill out into the roadways. Plus,
25 you know, we had complaints from area businesses that the

1 people that wanted to utilize those businesses or the other
2 public that wanted to utilize those sidewalks could not do so
3 if they were blocked.

4 Q So a briefing occurred with regard to the "keep them
5 moving"; is that correct?

6 A That's correct.

7 Q And how is that strategy explained?

8 A Captain Johnson explained to them that -- you know,
9 basically, what I -- what I said -- that they would need to
10 keep moving to minimize the crowds and the only way that there
11 would arrests would be if the elements were made of failed to
12 disperse.

13 Q And that's the statute we've been looking at earlier; is
14 that correct?

15 A That's correct.

16 Q Okay. So it was sort of a two-step analysis, first, keep
17 them moving, and then if not, they had to conduct an analysis
18 with regard to whether they were in violation of that statute;
19 is that correct?

20 A That's correct.

21 Q All right. So the instruction was not "Keep them moving,
22 and if they don't, you're going to lock them up right away"?

23 A That's correct, no.

24 Q Would that have been feasible?

25 A Operationally, it would not. You know, when you have a

1 coupled hundred people there, I don't know how you could
2 enforce that, so we -- as you've heard before, officers had
3 lots of -- lots of discretion.

4 Q Do you remember -- did that strategy last very long?

5 A It didn't really work very long just because of the -- of
6 the size of the crowds. It would work early afternoon into
7 the evening, but once the crowds got large, that -- it really,
8 really didn't work as well as we would have liked for it to.

9 Q So was the last briefing that Monday night, the 18th?

10 A That -- that we discussed it specifically is what I
11 recall.

12 Q Okay. And was that -- would you say, based on your
13 presence there, that that strategy was even being used within
14 a couple days of the 18th?

15 A Not after that, no.

16 Q Okay.

17 A Not under our command anyway.

18 Q At some point, you -- I think you indicated earlier
19 something happened on the 27th. What was that?

20 A The 27th, things had -- had calmed down enough. The
21 National Guard had actually left guarding our command post,
22 and we disassembled our command post, not only our mobile
23 command post but also the offices that we had established
24 within the mall at Lucas and Hunt, and we turned the
25 communications then over to the Troop and to St. Louis County.

1 So our on-site command post ceased to exist on that day.

2 Q Okay. Now, I think we had evidence earlier in the day
3 that there was another order on September 3rd. Is that
4 correct?

5 A Well, the Executive Order then expired on -- on the 3rd,
6 or the Governor withdrew it. I'm not sure of the legal term,
7 but, yes, the Executive Order, he pulled it on September the
8 3rd.

9 Q So at least to your mind the Patrol was not the lead
10 agency after the 3rd; is that correct?

11 A Legally, we would not have been after the 3rd.

12 Q And in terms of -- how many people did you still have in
13 Ferguson after the 3rd?

14 A We kept just a couple small contingent zones there,
15 probably four or five a shift. They have had a couple
16 incidents since then, the shooting a couple nights ago. So,
17 naturally, a few more people would come in, but, yeah, going
18 from 150, 200 to four or five a shift.

19 Q All right. And what -- those four or five per shift,
20 what are their assignments or what are they -- generally, what
21 are they supposed to be doing?

22 A They're actually working in the West Florissant area.
23 They're actually practicing community policing and trying to
24 bring Ferguson back into the fold in that area.

25 Q And operationally, you're not aware of anything the

1 Patrol has done to be a lead agent -- to be the lead agency in
2 Ferguson since the 3rd; is that correct?

3 A Not lately, no.

4 Q Captain -- Captain Johnson still goes to Ferguson; is
5 that correct?

6 A He does. He's still -- he's still helping out. He's --
7 you know, he's from Ferguson. He -- you know, he believes in
8 trying to make this a safe -- you know, a safe community, and
9 he's doing all he can from the Patrol's aspect to do that.

10 Q Okay. Now, I take it none of us know whether the Patrol
11 might be the lead agency again in Ferguson; is that correct?

12 A We hope we don't have to be.

13 Q Okay. We can't rule it out?

14 A That's true.

15 Q Okay. We don't know what tactics you might want to use
16 or strategies; is that fair?

17 A Not until those issues are presented.

18 Q In terms of -- you've heard a little bit about a protest
19 assembly zone. There's no -- there's been no discussion of
20 that, correct, at this point?

21 A No.

22 Q Or has there been any discussion regarding keeping
23 movement since, you know, August 18th, 19th, or 20th in the
24 Patrol as far as you're --

25 A Not that I'm aware of.

1 Q All right. Now, you do remember having conversations
2 with Ms. Spillars regarding the protest assembly zone; is that
3 correct?

4 A I do.

5 Q Did you -- you discussed various locations?

6 A We did.

7 Q All right. What location did you give her for a PAZ?

8 A I think what I gave her on the phone was 9026 West
9 Florissant. It was adjacent to a furniture store. It was an
10 old Ford parking lot.

11 Q All right. I think you heard today that what was
12 communicated was the grass lot across the street. Is that
13 correct?

14 A That is correct.

15 Q All right. That was just a miscommunication?

16 A It was a miscommunication. We were looking at a map at
17 the same time, and she thought I was talking about -- the
18 location we had found was the other side of the street, so
19 that was just a communication part. She was -- she was in
20 Jefferson City. I was on scene.

21 Q And you -- ultimately, that patrol zone was -- that PAZ
22 was established?

23 A It was.

24 Q People -- not many people went there, did they?

25 A They did not.

1 Q Okay. And you stopped and you didn't really encourage
2 people to go there after a point in time; is that as far as
3 you knew?

4 A As far as I know, yes.

5 MR. ISAACSON: One moment, Your Honor. I think I'm
6 done. One moment, Your Honor.

7 I have nothing else, Your Honor.

8 THE COURT: Cross-examination.

9 MR. DAVIS-DENNY: May I proceed, Your Honor?

10 THE COURT: Yes.

11 MR. DAVIS-DENNY: Thank you.

12 CROSS-EXAMINATION

13 BY MR. DAVIS-DENNY:

14 Q By when did you determine that the "keep moving" rule did
15 not work as well as you'd hoped?

16 A Probably I'd just guess somewhere around the 19th.

17 Q And why did it not work as well as you'd hoped?

18 A Probably because the crowds got too large and they --
19 when you'd get into the nightfall, they wouldn't adhere to the
20 verbal commands.

21 Q Okay. What strategy did you turn to instead?

22 A We had started trying to identify the -- those that
23 caused violence, and we inserted arrest teams into the crowd
24 to arrest -- arrest them was the strategy that we started at
25 that time.

1 Q And was that effective?

2 A It was.

3 Q Okay. If you're called back in to Ferguson, do you
4 expect to use this "keep walking" rule again?

5 A I don't know. I'd have to say I would have to see
6 what -- what presents itself. I can't say what's going to
7 happen next week.

8 Q Your officers are still involved in Ferguson; is that
9 correct?

10 A On an assistance basis, yes.

11 Q Okay. Have you given them any order not to assist the
12 Ferguson Police Department in enforcing a "keep moving" rule?

13 A Well, the only thing that they've been told they cannot
14 enforce is city ordinance.

15 THE COURT: I'm sorry. Can you --

16 THE WITNESS: They cannot enforce a city ordinance.

17 Q (By Mr. Davis-Denny) Okay. But my question was: Have
18 you given an order to your officers to not assist the Ferguson
19 Police Department in enforcing a "keep moving" rule?

20 A I have not.

21 Q You were asked some questions about the protestor
22 assembly zone. You had a conversation with Ms. Spillars; is
23 that correct?

24 A Spillars, yes.

25 Q Spillars?

1 A She's the number two person at the Department of Public
2 Safety.

3 Q Okay. Did you speak with her the day of the temporary
4 restraining order hearing in this case?

5 A I'm not -- not sure.

6 Q Did you speak with her the day of August 18th?

7 A I believe that was the day I spoke to her, yes.

8 Q Okay. Had you or one of your officers received
9 permission from the furniture store owner to -- to use that
10 parking lot when you had that conversation with Ms. Spillars?

11 A The first conversation, I did not know the answer to
12 that. I hung up the phone, and then Captain Johnson and I
13 drove down to that location and made contact with the -- with
14 the owner.

15 Q Your -- your --

16 THE COURT: So was this the furniture store parking
17 lot, or was it the old Ford dealership parking lot?

18 THE WITNESS: It's the same place, Your Honor.

19 THE COURT: It's the same place?

20 THE WITNESS: Yes.

21 THE COURT: And so you did go talk to the owner?

22 THE WITNESS: Captain Johnson -- actually, we both
23 talked to him. He talked to him personally. I don't remember
24 if it was the 18th or the 19th, but during -- during that
25 time, I was not aware of the legal procedure that was going

1 on. The only thing I was aware of is she was asking me to
2 find a location for the approved assembly area.

3 Q (By Mr. Davis-Denny) Okay. If another witness testified
4 that he witnessed Captain Ron Johnson having a conversation
5 with the furniture owner on -- the furniture store owner on
6 the 19th, you wouldn't disagree with that?

7 A And I saw Mr. Doty. I believe I talked to him actually
8 that day, too, so I -- I don't -- I didn't have a note what
9 day. It was either the 18th or the 19th.

10 MR. DAVIS-DENNY: Okay. And, Mr. Bales, could you
11 please pull up Exhibit 3 real quick, just so we can clarify
12 this? And if you'll -- first, pull out the title of the press
13 release.

14 Q (By Mr. Davis-Denny) You may be able to read that without
15 us pulling it out, but do you see it says, "New Ferguson
16 Protestor Assembly Zone and Media Staging Area"?

17 A Yes.

18 Q And this is a press release from the Missouri State
19 Highway Patrol; is that correct?

20 A Yes.

21 MR. DAVIS-DENNY: Okay. And if you -- Mr. Bales, if
22 you will please go down to the first paragraph under the one
23 that begins with emphasis, so it's, "An approved assembly
24 zone" --

25 THE COURT: Why don't you just blow up the whole

1 text, and then you can ask him about specific things.

2 MR. DAVIS-DENNY: Thank you.

3 Q (By Mr. Davis-Denny) Do you see, sir, where it says, "An
4 approved assembly zone for protestors is being established at
5 the old Ford dealership building located at 9026 West
6 Florissant Avenue"?

7 A Yes.

8 Q Okay. It had not been established the previous day; is
9 that correct?

10 A No. I think it was -- I actually think that it was
11 established. I just don't think we had did a very good job of
12 notifying the protestors where it was. I think we should have
13 done a better job there.

14 Q Okay.

15 A And that's -- I think that's the reason why -- you know,
16 how do you communicate to the masses but a press release, and
17 that's why we decided to do that.

18 Q Okay. The officers were not telling people on Florissant
19 Avenue about the protest area zone on the 18th at least; is
20 that correct?

21 A I don't know what they were advising.

22 Q Okay. There was no instruction given by you or Captain
23 Ron Johnson as far as you know to officers that when they told
24 people to keep moving, they were supposed to tell people about
25 the protestor assembly zone; is that correct?

1 A I was not aware of that. Yes.

2 Q I want to make sure I understand the rule that was
3 formulated. It was an order -- it was an order to keep
4 moving. People -- people were -- officers were told to order
5 protestors to keep moving on Florissant Avenue; is that
6 correct?

7 A Well, I really personally wouldn't call it an order. I
8 think it was a strategy that we implemented operationally, and
9 Captain Johnson explained it at the briefing, that that was a
10 strategy that we were going to -- going to use.

11 Q Okay. So there was not an order from the Highway Patrol
12 to the County that they had to implement this strategy; is
13 that correct?

14 A Not that I recall, no. That really wasn't the way the
15 Unified Command was operating anyway, so it wouldn't be like
16 we were ordering that. It was discussed in briefing that that
17 was a strategy we were going to use. I know there was lots of
18 discussion of -- about discretion. I know we talked a lot
19 about it at that time because there were some other incidents
20 going on during that time with other police officers'
21 professional actions. I know I talked a lot about patience
22 and respect. So we talked about a lot of things when we
23 implemented that. I know as the temperature got warmer
24 Captain Johnson also talked about we need to use lots of
25 discretion because it's hot. We even actually provided water

1 during -- during those marches, the NAACP march and then the
2 100 Black Men that was on the 26th also. So we provided a lot
3 of service as we were providing security also.

4 Q Did you -- you mentioned in there that there were prior
5 incidents with officers. I just want to understand what
6 you're referring to. Are these incidents that gave you --

7 A Unprofessional, yeah.

8 Q Unprofessional actions by officers?

9 A Unprofessional acts I'm talking about that were
10 dismissed. I believe it was a St. Ann officer and then
11 another officer. So we were constantly reminding our officers
12 about their conduct and discretion.

13 Q Okay. And did that cause you concern about granting your
14 officers excessive discretion to enforce or not enforce the
15 "keep moving" rule?

16 A It did not. I didn't really think about that
17 specifically because, you know, to do anything about it, you
18 would have to be enforcing the failure-to-disperse statute and
19 make the elements of that.

20 Q Okay. You don't believe that the "keep moving" rule was
21 the same thing as the failure-to-disperse statute, right? In
22 your mind, they are separate things, right?

23 A Oh, yeah, they're separate, yes.

24 Q Okay. Because, for example, with the "keep moving"
25 order, officers weren't required to declare an unlawful

1 assembly, right?

2 A With the "keep moving" order?

3 Q Yes.

4 A No.

5 Q And with the "keep moving" order, they weren't required
6 to declare a riot; is that right?

7 A That's correct.

8 Q And they weren't required to issue a verbal order to
9 disperse from the scene; is that correct?

10 A Correct.

11 Q Okay.

12 THE COURT: What does it mean to declare a riot?
13 Somebody stands up and says, "I declare this is a riot"? Your
14 questions seem to imply that the failure-to-disperse order
15 requires someone to somehow declare a riot, and I don't know
16 what that means.

17 MR. DAVIS-DENNY: I think that actually is typical
18 police practice, Your Honor, as I understand it. That is
19 the -- when there's --

20 THE COURT: Somebody stands up and says, "I declare
21 this is a riot"?

22 MR. DAVIS-DENNY: "I declare this crowd a riot," or
23 it can be an unlawful assembly in the case of -- you know, the
24 distinction between --

25 THE COURT: Okay. Well, I haven't heard any evidence

1 about that, but go ahead and ask your questions. I was just
2 confused by the terminology, having not heard any evidence or
3 anything else about that.

4 Q (By Mr. Davis-Denny) Okay. Let's talk about the
5 refusal-to-disperse statute for a second.

6 A Okay.

7 Q When -- do you have experience with enforcing the
8 refusal-to-disperse statute?

9 A Not personally but as a commander, yes.

10 Q Okay. Have you been trained on how to --

11 A I've read the statute and discussed it with legal
12 counsel, yes.

13 Q Okay. And when you -- what is the typical Missouri State
14 Highway Patrol procedure when it comes to enforcing a
15 refusal-to-disperse statute when you see a crowd has gathered
16 of six or more people and they are acting violently to break
17 the law? What happens next?

18 A You would have -- you would have to identify -- because
19 the six or more people would have to gather to commit a crime,
20 you would identify that crime, and that would be an element of
21 that failure to disperse.

22 Q Okay. And is it true --

23 THE COURT: When you say you would have to identify
24 it, what do you mean?

25 THE WITNESS: Identify another crime that those six

1 people unlawfully -- whether they threw rocks, Your Honor, or
2 in this instance --

3 THE COURT: Yeah, and I think I get that part. What
4 I'm trying to get was: What do you mean by -- is "identify"
5 the same thing as "declare"?

6 "I identify" -- you have to say it out loud to the
7 people?

8 THE WITNESS: No.

9 THE COURT: "I see that there are six people here. I
10 declare a riot." Is that what you have to do?

11 THE WITNESS: No, Your Honor, not that I'm aware of,
12 and we've had -- you know, this has been going on since, you
13 know, the 9th or 10th, and I haven't heard anyone declare a
14 riot either, but I think we've had one.

15 Q (By Mr. Davis-Denny) Okay. Do you -- is the typical
16 practice when you're enforcing the refusal-to-disperse statute
17 to first issue an order to disperse?

18 A Yes.

19 Q Okay. And if someone fails to disperse after an issue
20 has been properly ordered under the -- if you're enforcing the
21 refusal-to-disperse statute, then you can arrest them for
22 refusal to disperse is your understanding of how it works?

23 A Yes.

24 MR. DAVIS-DENNY: Okay. Thank you. Thanks for
25 clarifying that. Thank you, Your Honor, for clarifying.

1 Q (By Mr. Davis-Denny) Now, under the "keep moving"
2 statute, if they were told to keep moving --

3 MR. ISAACSON: Statute?

4 THE COURT: Not statute but --

5 MR. DAVIS-DENNY: I'm sorry.

6 THE COURT: Yeah, we're all getting tired. Go ahead.
7 Yeah. The idea of the strategy?

8 Q (By Mr. Davis-Denny) Yes. Under the "keep moving"
9 strategy, I just want to make sure I understand how it worked
10 again. If someone was told to keep moving and they refused to
11 keep moving, then what was supposed to happen?

12 A To make an arrest, you would have to make the elements of
13 the failure to disperse.

14 Q Okay. So they would -- are you saying that they would
15 not have been arrested simply for failing to move?

16 A Yes.

17 Q Okay. And so if -- if any officers told protestors that
18 "If you don't keep moving, you will be arrested," they were
19 not following or they were incorrectly exercising their
20 discretion under the policy; is that correct?

21 A I don't know of that happening firsthand, but under your
22 example, I would agree with you.

23 MR. DAVIS-DENNY: Okay. That's all I have. Thank
24 you.

25 THE COURT: Further questions?

1 MR. SHUMAN: Yes, Judge.

2 THE COURT: Go ahead.

3 CROSS-EXAMINATION

4 BY MR. SHUMAN:

5 Q Major, a few moments ago, the attorney asked you whether
6 there was an order that the County Police had to obey. Did
7 you take that to mean a written directive?

8 A Yes.

9 Q Okay. Is there any doubt that once the Highway Patrol
10 and Captain Johnson decided that the strategy of the "keep
11 people moving" was decided that every other law enforcement
12 agency there -- City of St. Louis, St. Louis County, Ladue,
13 Florissant, all the ones that Ms. Elzie described -- had to
14 implement that strategy?

15 MR. DAVIS-DENNY: Objection. Leading, Your Honor.

16 THE COURT: Overruled.

17 A I would not say that about the other. I would only say
18 that about the agencies in the Unified Command. The other
19 agencies are not part of the Unified Command. There would be
20 no expectations for them to follow that order.

21 MR. SHUMAN: Okay. And, Judge, can I --

22 A And really it was a strategy. It wasn't an order. So,
23 yeah, they would -- but they would be expected to do so since
24 he was the Incident Commander.

25 MR. SHUMAN: Judge, can I approach the witness,

1 please?

2 THE COURT: You may.

3 MR. SHUMAN: I hand you what was marked County
4 Exhibit C.

5 Q (By Mr. Shuman) A little bit ago, you said that the
6 Highway Patrol was no longer the lead agency.

7 A Uh-huh.

8 Q Now, do you recognize what this County Exhibit C is?

9 MR. ISAACSON: Can you put it up? I don't --

10 THE WITNESS: Yeah. I was going to say I can't --

11 THE COURT: Would you put a copy on the screen for
12 us, please?

13 Have you ever seen this before?

14 THE WITNESS: I have not.

15 THE COURT: Do you know what it is?

16 MR. SHUMAN: I was going to ask him to authenticate
17 it. If the man's never seen it, I can't ask him that.

18 THE WITNESS: No, I've never seen this.

19 THE COURT: Okay.

20 Q (By Mr. Shuman) Do you mind reading the last paragraph?

21 THE COURT: Is there a dispute about what this is?
22 Can we agree, admit this by stipulation?

23 MR. DAVIS-DENNY: That's fine, Your Honor.

24 THE COURT: Exhibit C is received into evidence.

25 MR. ISAACSON: That's fine.

1 THE COURT: And now you can have him read it. The
2 "Now, therefore" paragraph?

3 MR. SHUMAN: Yes, please.

4 A "Now, therefore, I, Jeremiah W. (Jay) Nixon, Governor of
5 the State of Missouri, by virtue of the authority vested in me
6 by the Constitution and laws of the State of Missouri,
7 including Chapter 44 R.S.Mo., do hereby terminate Executive
8 Order 14-08, including the State of Emergency established
9 therein, and terminate Executive Order 14-09."

10 MR. SHUMAN: And that will be all the questioning.
11 Thank you.

12 THE COURT: All right. Anything further from this
13 witness?

14 MR. ISAACSON: No, Your Honor.

15 THE COURT: Okay. I have a couple of questions.

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: So when -- on this "keep moving"
18 strategy, as the shorthand way of saying it, people are going
19 to keep moving. I believe there's been testimony -- I think
20 you said it -- that there was going to have to be some
21 discretion used. The officers were going to have to use their
22 discretion. Now, you just answered some questions about, you
23 know, determining when the failure-to-disperse law has been
24 violated. What discretion were they supposed to exercise?
25 What were the factors they were supposed to consider in

1 exercising their discretion in whether to tell people to keep
2 moving?

3 THE WITNESS: It certainly wasn't the elements of the
4 failure to disperse. It was only on the size of the crowd.
5 You know, earlier, earlier in the evening, the crowds were not
6 very large, and so it wasn't as important to implement that on
7 every person unless they started grouping up. So just to use
8 discretion just because if one person happened to stop, there
9 wasn't a need for them to come off their post or their
10 location and tell them to keep moving. It's only whenever the
11 crowd started being larger. So use discretion in how you
12 implemented it that way.

13 THE COURT: Okay. So the only thing you've told me
14 that would be part of the discretion is the number of people
15 in the crowd?

16 THE WITNESS: That and when to utilize it, yes.

17 THE COURT: And what's the "when"?

18 THE WITNESS: Whenever there would be enough people
19 there that if they started formulating out they would either
20 get into the roadway or block the sidewalk.

21 THE COURT: And so your testimony is the strategy was
22 to only use it during those kinds of situations?

23 THE WITNESS: That's -- that was the intent of it. I
24 don't think that it was communicated as well, but that was
25 certainly the intent.

1 THE COURT: Okay. All right. Thank you.

2 All right. Anything further?

3 MR. ISAACSON: No, not from us, Your Honor.

4 THE COURT: Okay. So you can step down.

5 THE WITNESS: Thank you.

6 THE COURT: And let's see. Mr. Shuman, would you
7 take your exhibit back off the witness stand?

8 And then -- all right. I need to hear argument.

9 It's very late in the day. How do you all want to proceed? I
10 mean we'll keep going. That's, I think, what we need to do,
11 but --

12 MR. DAVIS-DENNY: Yes, I'm happy to.

13 THE COURT: -- unless you want to come back in the
14 morning and argue, which I don't think you do.

15 MR. DAVIS-DENNY: Either way is fine with me.

16 THE COURT: Well, go ahead. Tell me what you -- tell
17 me what you think you want me to do. Go ahead. You can step
18 to the lectern and make your argument, any argument you want.
19 I have some questions, but --

20 MR. DAVIS-DENNY: Yes.

21 THE COURT: -- I'll ask you to say whatever you'd
22 like at this point. And I have read all the briefs and
23 everything, so I'm not suggesting you need to start at the
24 beginning.

25 MR. DAVIS-DENNY: Yes. Well, I would welcome any

1 questions that Your Honor has. I don't -- I do not want to
2 waste Your Honor's time at this point of the day in
3 particular, and I appreciate Your Honor's patience today.

4 I think at the TRO hearing Your Honor, although
5 denying the TRO, was one of the first to, I think, recognize
6 the serious due process implications that are presented by
7 this law, in particular, the lack of notice that it gives to
8 people of what it actually does and does not allow and the
9 excessive discretion that it gives to officers, and it turns
10 out now with the benefit of more time and being able to talk
11 with more witnesses that those, I think, concerns were
12 well-founded.

13 As we've heard today, discretion was built into the
14 very foundation of this policy. It was intended to be
15 discretionary. Captain Bader testified about how it gave --
16 how they gave him, quote, a lot of discretion. Chief Belmar
17 used the phrase --

18 THE COURT: Yeah, okay, but police officers always
19 have to exercise discretion. So discretion by itself is
20 not -- you know, the requirement that you exercise discretion
21 is not by itself a problem. Every police officer who walks a
22 beat has to exercise discretion every minute he's out there,
23 and there's nothing unconstitutional about that.

24 MR. DAVIS-DENNY: That's fair, Your Honor, but here,
25 the discretion that was granted, as we've heard, was -- was

1 not acted upon in a way that was at all consistent or that the
2 individuals on the sidewalks could understand what it meant.
3 At times, it meant you couldn't stand still at all. At times,
4 it meant you couldn't stand still for more than five seconds.
5 At times, it meant you were walking too slowly; you must walk
6 faster.

7 And particularly when this is occurring in the
8 context of core First Amendment dialogue about police
9 practices, about race relations, what is undoubtedly at the
10 essence of the First Amendment, I think that that excessive
11 discretion and the lack of notice are truly problematic. And,
12 indeed, Your Honor, I think the lack of notice issues and the
13 haphazard nature in which the rule was enforced really go to a
14 number of different issues in this case.

15 One, of course, is the due process concern that we've
16 already talked about, but I think it also goes to the
17 appropriate tests that you would apply if you got past the due
18 process issue and you started looking at this as a pure First
19 Amendment case. A time, place, and manner test assumes that
20 you are not giving officers excessive discretion to enforce
21 the law. It assumes a neutral statute that is easily applied.

22 It also, I think, raises content neutrality concerns
23 that would also ratchet up the level of scrutiny that you
24 would apply if this were -- if you reached the First Amendment
25 analysis, but I think it also has important implications for

1 the public safety interests, and it has implications in a
2 couple of different ways. One is we've heard testimony from a
3 variety of witnesses today that the -- the rule and, in
4 particular, its haphazard enforcement actually has the
5 perverse effect of increasing tensions in the area. We heard
6 that from percipient witnesses. We heard that --

7 THE COURT: Let me ask you this. What about in the
8 nighttime hours where violence is happening or beginning to
9 happen as did happen in this case? Are you saying it could
10 never be used; they could never tell people to move along in
11 that situation or keep moving?

12 MR. DAVIS-DENNY: No, I'm not telling -- that is not
13 my argument. If there is a -- an unlawful assembly or a riot,
14 then they certainly have the --

15 THE COURT: So --

16 MR. DAVIS-DENNY: Yes.

17 THE COURT: Right. So your argument is the only
18 thing police officers can do in this instance where there is a
19 large crowd gathering and violence is either beginning or it
20 appears to be beginning -- the only thing they can do is order
21 the crowd to disperse?

22 MR. DAVIS-DENNY: Well, no, I wouldn't go that far
23 either, Your Honor. We heard about options that the Highway
24 Patrol implemented after they determined that this policy
25 actually was not effective. It involved putting teams of

1 officers in the crowd, stationed throughout the crowd, and
2 that that, apparently, was an effective strategy. So, no, I'm
3 not saying that that is the only thing that they can do, but
4 to answer your earlier question, it certainly would not -- the
5 injunction that we're seeking certainly would not prohibit
6 them from dispersing an unlawful assembly or a riot.

7 THE COURT: What about the issue that they say
8 they're not doing it and they're not in control? You've -- I
9 mean, have you sued the right Defendants? Ferguson is not a
10 Defendant in this case nor is anybody associated with
11 Ferguson.

12 MR. DAVIS-DENNY: Right. I think the evidence shows
13 that both the Highway Patrol and the County are still involved
14 in law enforcement efforts in Ferguson is the first answer.
15 The second answer is that Ferguson clearly is enforcing, as we
16 saw from the video earlier. Ferguson --

17 THE COURT: Well, those videos -- the officers in
18 those videos kept referring to the loitering ordinance, which
19 has not been raised in this case until I heard it from those
20 officers, and I assume that that means that Ferguson must have
21 some kind of a loitering ordinance and that's what those
22 Ferguson police officers were relying on, or at least that's
23 what they were saying, right?

24 MR. DAVIS-DENNY: That's correct. That's correct.

25 THE COURT: So that's a little different, isn't it?

1 MR. DAVIS-DENNY: It is. It is a different basis
2 than what the Highway Patrol and the County had relied upon.
3 It has its own problems, including that the ordinance requires
4 that you be blocking the sidewalks so that others can't get
5 past, but setting that issue aside, it is.

6 So I think the other answer is that the Highway
7 Patrol and the County remain on -- you know, you can debate
8 what level of likelihood it is that they will get involved,
9 but there is a significant likelihood that they will get
10 reinvolvement, and the evidence of that includes the fact that
11 tensions are still high in Ferguson. That was testimony that
12 you heard from a couple of different fact witnesses.

13 You also heard, I thought, some very illuminating
14 testimony from one of the County's witnesses, Captain Bader,
15 who said on direct examination that if he were sent back in
16 there -- out there again today, he would enforce the same
17 "keep moving" rule. I think that easily meets the likelihood
18 of irreparable harm test.

19 And I think back to Your Honor's *Iron Hills Schools*
20 case from a few years ago where there certainly was not a
21 certainty after the school district changed its policy that
22 Bibles would again be distributed in fifth grade classrooms,
23 but there was significant evidence based on past practices and
24 statements that --

25 THE COURT: Didn't the Eighth Circuit reverse me on

1 that case?

2 MR. DAVIS-DENNY: No. You were affirmed.

3 THE COURT: And so I -- yeah, well, but only --

4 MR. DAVIS-DENNY: You were affirmed, Your Honor.

5 THE COURT: Okay. Well, I'm not sure that they
6 agreed with that analysis, so go ahead.

7 MR. DAVIS-DENNY: There were -- that's fair, Your
8 Honor, but I think that part of your decision was absolutely
9 correct. I mean there are -- as a --

10 THE COURT: As I recall it, they affirmed part it of
11 and said I was completely wrong on other parts of it, so I'm
12 not sure which part they thought I was wrong about.

13 MR. DAVIS-DENNY: Yeah, well, I think -- if you want
14 to get into it, Your Honor, I'm happy to have a longer
15 discussion about it, but given the hour, I don't want to get
16 too far off track here, but I think that portion of your
17 opinion does remain good law.

18 In any event, there is a wealth of law out there that
19 does not require certainty of irreparable harm. It's a
20 likelihood of irreparable harm, and here, I think we've met
21 that standard based on the fact that it's still being
22 enforced, the testimony of Captain Bader about how he would
23 enforce it again if he goes back in there. Of course, the
24 Plaintiff's own testimony that this is part of his job to go
25 to that area and that if there -- we heard about the major

1 protest rally that's being planned for a couple of weeks from
2 now that will draw several thousand people back to St. Louis.
3 So I think there is a high likelihood that we will see the
4 Highway Patrol or the County get reinvolved.

5 THE COURT: All right. Thank you.

6 I'll hear anything from the Defendants.

7 MR. SHUMAN: Judge, your question that you asked
8 before is what is it that you want -- that we want you to do,
9 and I don't want to repeat much about what has been briefed,
10 but I don't believe you've heard anything today that would
11 lead you to believe that this -- the policy or the strategy,
12 whatever we term it, was anything other than something that
13 was directed by the State. Now, plainly, the County had a lot
14 to do with the proposal of it, but it's just as plain -- and
15 the County agrees that it was a good idea and to some extent
16 effective.

17 THE COURT: So your argument is, "The County can't be
18 enjoined because we were just doing what the Highway Patrol
19 told us to do." I mean that's in your brief, I know, but is
20 that basically what you're saying?

21 MR. SHUMAN: Well, essentially, that's what it is. I
22 don't mean to make light of it by saying that was the -- like
23 to do a Nuremberg defense. I don't mean to put it like that.
24 What I'm saying is in order to have an injunction against
25 St. Louis County, the goverant -- under a 1983 jurisprudence,

1 there needs to be evidence that this policy or strategy was a
2 custom, practice, or policy of a final policymaker of
3 St. Louis County. There's no evidence at all to suggest that
4 this was made by a final policymaker of St. Louis County.

5 Now, there were a few random instances of County
6 police officers telling people what they had to do and to
7 comply with this rule, but that hardly rises to the level of
8 it being a County custom because a few officers were told --
9 made statements about this. Plus, you have to find --

10 THE COURT: Well, hold on. So what you're saying is
11 even though your own captain said he would do it tomorrow if
12 he were out there because this is the policy -- how many
13 people -- that it's not a policy first, right?

14 MR. SHUMAN: Say --

15 THE COURT: Your own witness said he would use this
16 again if he went out there tomorrow, right? He's never been
17 told it's not the rule.

18 MR. SHUMAN: As I understood it, yes, because he has
19 never been told not to, but that doesn't make it the County's
20 policy. It means he's under the belief that what the State
21 says still goes today.

22 THE COURT: Well, there are times when things don't
23 have to be written policies but there's sufficient custom.
24 You said a few random officers. So are you saying that -- I
25 mean, how many would be enough in evidence?

1 MR. SHUMAN: I don't know, but not enough -- not that
2 we saw. We don't know who they were. The only -- we saw
3 people testify that those statements were made by people in
4 tan officer -- in tan uniforms. Only one of them was
5 identified as a County officer. The others, they said, "Well,
6 I don't even know if they were County officers. They may have
7 been." There were so many jurisdictions there; who knows what
8 other uniform colors they are. I don't know what all the
9 colors they are. So I only heard one person actually
10 identified positively as a County officer. So I don't know
11 what the answer to -- to your question is, if there's a
12 minimum threshold, but it's -- it's got to be -- I think the
13 case law uses the term "widespread." There's nothing at all
14 about a few that would be widespread.

15 THE COURT: So even if -- even though at the roll
16 call, the officers are being directed to do this, you don't
17 believe that rises to the level because whoever was doing the
18 directing wasn't high enough up in the organization; is that
19 what you're saying?

20 MR. SHUMAN: No, not at all. The roll call
21 directions were given because, ultimately, Captain Johnson
22 gave the directive that that was to be followed. What I'm
23 suggesting is that if we want to say that an individual
24 officer violated the constitutional rights of a protestor,
25 unless there's a number of them -- and I submit that it's more

1 than three -- then the -- the County can't be tagged with
2 respondeat superior liability for an unconstitutional act of a
3 police officer if they were unconstitutional. I've not
4 conceded that they were, but even if they were, you'd have to
5 have widespread custom of doing this unconstitutional act.

6 I don't want to spend too much time defending the
7 reasonableness of this policy, although every -- all of the
8 County witnesses, if asked, would agree that it was
9 reasonable, but I will suggest that Mr. Rothert was asking you
10 to think that the policy was not a good one not on the basis
11 of it being -- hurting people's free-speech rights but because
12 it was not effective, it would have some negative effects, and
13 I think that's what the expert witness -- that I can't recall
14 his name -- was suggesting, that the policy simply wasn't a
15 good one, it didn't comply with best practices, but he never
16 testified about what effect it would have on constitutional
17 rights of people, and I think that's what the Plaintiffs are
18 suggesting. They disagree with the utility of the policy, and
19 I don't think -- I hope that you won't pay attention to the
20 utility of the policy. It's not the Court's role.

21 I think that will conclude my remarks.

22 THE COURT: Thank you. Mr. Isaacson. In your brief,
23 you said that -- that they were -- the Plaintiffs were
24 essentially asking me to order that they not -- that you all
25 not follow the failure-to-disperse law, and the brief seems to

1 equate the failure-to-disperse statute with what was -- what
2 this case is about, whatever you want to call it, the "keep
3 moving" policy or strategy. "Keep moving" strategy seems to
4 not draw too many objections. So you're not still saying
5 those are the same things, are you?

6 MR. ISAACSON: Yeah, they're -- they are two
7 different things. I mean, what the evidence was is there was
8 a strategy and that, you know, we could apply it, but any
9 arrests that had to be made would be pursuant to that statute.

10 THE COURT: Okay. All right. Go ahead.

11 MR. ISAACSON: Okay. And, you know, just being here
12 all day and being brief, I haven't heard one person say a
13 Missouri State Highway Patrol member enforced this or did
14 badly with regard to any of this or told anybody to get moving
15 when there wasn't a riot present or anything. Haven't heard
16 anything like that.

17 The evidence is also uncontradicted that we weren't
18 doing this after a couple of days. Okay.

19 THE COURT: So St. Louis County says, "We're not
20 liable because Captain Johnson made us do it," and you're
21 saying, "We're not liable because -- or because the Highway
22 Patrol didn't go out and do it themselves; they told the
23 County to do it." That seems a little circular.

24 MR. ISAACSON: Okay. The question here is whether
25 we're enjoining.

1 THE COURT: Right.

2 MR. ISAACSON: Okay. And what the evidence is and
3 they're -- as with any human beings, especially the ones who
4 were working 20 hours a night and everything, they're not
5 going to remember it the same way, okay, but what the evidence
6 is is there's nothing here that says we were applying that in
7 any sort of unconstitutional manner.

8 I would suggest that, you know, they brought in
9 individual instances. Well, understand with the numbers that
10 we're talking about, those are very isolated instances in
11 terms of the contacts that were going on among hundreds of
12 officers and hundreds and thousands of protesters. I don't --
13 I'm not here to argue for him, but I mean I don't think that's
14 a sufficient number to even go to the County, okay, but that's
15 an aside. But what we are saying is, okay, A, you know, we
16 weren't doing it wrong. Okay. There was two different
17 things. B, we weren't even doing it after awhile, and that
18 was before we stopped being lead agency there. Essentially,
19 things had wound down with our involvement on the 27th. They
20 officially wound down by the 3rd. There's nobody here who
21 says -- who would testify that we participated in any manner
22 with regard to enforcing either this strategy or this statute
23 since that time. So they are asking that you essentially
24 enjoin conduct based on complete speculation, based on what
25 might happen in the future with regard to events in other

1 locations, based on other things that none of us here can know
2 about, and it is our position that the Court should be
3 reticent to do that because of the interests cited in the
4 cases about courts having to deal with day-to-day police
5 issues, especially in the circumstances we've heard about
6 where there are rapidly changing circumstances, where people
7 are getting injured, people may die, and we think it is very
8 important that these officers, to the extent whatever happens,
9 have as much freedom to deal with that situation as they can
10 within constitutional limits, and as we sit here, nobody has
11 come up here and testified, "That Missouri State Highway
12 Patrol guy told me to move along, and, you know, there was no
13 riot."

14 Okay. So we really -- based on all that, we believe
15 an injunction, a preliminary injunction, is just -- would not
16 be warranted in this instance.

17 THE COURT: Mr. Davis-Denny, I'll hear any response.
18 Yeah, unless you want to say anymore.

19 MR. ISAACSON: No.

20 THE COURT: No. I was going to ask him.

21 MR. ISAACSON: I don't want to leave until you tell
22 me I can.

23 THE COURT: No. That's fine.

24 MR. DAVIS-DENNY: I'll try and keep it brief, Your
25 Honor, on *Monell* liability.

1 THE COURT: Yeah, that's the main point I'd like to
2 hear your response on. I mean you can say anything else, too,
3 but what about that?

4 MR. DAVIS-DENNY: Right. First thought, Your Honor,
5 is that on the -- there's really, I think, two different
6 points related to *Monell* that are being conflated here, and I
7 want to separate them out because I think analytically it will
8 be easier to deal with them separately because they are. The
9 first is: Is it a widespread enough custom that it is
10 attributable to the County as a policy or a custom, right?
11 The second issue which needs to be separated out is: Is this
12 a State order that the County is required to comply with? And
13 I think those are two separate issues.

14 So let's take the custom or practice. I mean I think
15 the question it raises in my mind is: If bringing in five
16 percipient fact witnesses who experienced being subjected to
17 the rule isn't enough, what more must one do at a preliminary
18 injunction hearing to show that this was a widespread custom?
19 Of course, you're not relying just on testimony either, Your
20 Honor. You've seen videos of County officers enforcing it and
21 not just one video but two different videos of County officers
22 enforcing the rule, and you've seen it in broad daylight when
23 there was no violence or unlawful activity going on, when even
24 the Defendants' witnesses seemed troubled that that was the
25 way that the rule was being enforced, and in several

1 instances, we know that there weren't large numbers of people
2 being gathered around. These were -- you know, for example,
3 in Exhibit 2, we have four people stopping to pray. So that's
4 the answer on custom or practice -- or policy. And clearly,
5 policy is being formulated here at the highest levels of
6 County government because we know that the Chief was involved
7 in formulating the policy. So that's one end of the *Monell*
8 liability issue.

9 The other end of the *Monell* liability issue is
10 whether this was an order from the State such that the County
11 simply became an arm of the State and isn't subject to 1983
12 liability, and I think the answer to that is clearly no. The
13 test, which I think the parties agree on, is that if a county
14 is authorized but not required to enforce a state statute, for
15 example -- that's typically the way this comes up -- then a
16 county can still be subject to *Monell* liability in that case.
17 That's *Vives* case out of the Second Circuit. The *Snyder* case
18 out of the Seventh Circuit refers to situations where the
19 county has discretion, and here, this is, I think, a very
20 different situation than those, the cases where *Monell*
21 liability has been rejected for counties because here we know
22 that the County was actively involved in formulating and
23 recommending the "keep moving" plan.

24 Chief Belmar testified that this rule was made in
25 collaboration. Major Johnson refused, even on leading

1 questions, to go along with the notion that this was an
2 explicit order that was given. It was a strategy, as he
3 continually referred to it as, and it was a strategy that was
4 formulated with the active involvement of the County's top
5 officials, so they are liable under *Monell*.

6 I think the other argument, the principal other
7 argument that the Defendants make, that I would just briefly
8 address is the point of whether the injunction would harm
9 public safety or whether the rule was necessary for public
10 safety, and I think, you know, you can look back at the expert
11 testimony, for example, of Dr. Ginger, and the point is not
12 that we're trying to second-guess the policies that are put in
13 place, but the point is if hardly any other city out there or
14 hardly any -- in fact, none of the model policies that we know
15 about refer to a "no standing" rule or a five-second rule.
16 Then it really undercuts the notion that this is in any way a
17 necessary component of -- of police practice and strategy, and
18 of course, that's a relevant consideration if you get to the
19 time, place, and manner test. I'm not sure it is a relevant
20 consideration, frankly, under due process. If there is a due
21 process --

22 THE COURT: Well, hold on. On the -- on the -- on
23 the standards for a preliminary injunction, the public
24 interest is a relevant consideration, and --

25 MR. DAVIS-DENNY: That's fair, Your Honor.

1 THE COURT: -- and one of the questions I have is
2 just, you know, how much should -- are you asking a court to
3 get involved in micromanaging what the police do in an
4 evolving situation and whether that could hurt the public
5 interest.

6 MR. DAVIS-DENNY: Right.

7 THE COURT: And, you know, there's been a lot of
8 violence, but as I think the first witness said or one of the
9 witnesses said, you know, nobody has been killed out there,
10 but I'm -- that still could happen. I mean, should I be the
11 one micromanaging this? I don't think it's a judge's role.

12 MR. DAVIS-DENNY: Micromanaging, I wouldn't
13 necessarily endorse, but I don't think this requires you to
14 micromanage. This is a policy that they've abandoned as
15 ineffective is what they say, and at the same time, they tell
16 us -- you know, another witness tells us that if they go back
17 out there again, they'll start enforcing it again.

18 But two responses to the public interest factor. One
19 is that the public interest, of course, swings both ways here.
20 The public always has an interest in protecting First
21 Amendment freedoms, but I'll also go back to my earlier point
22 that there is abundant testimony in the record that this
23 actually harms safety because when you apply a policy
24 inconsistently to people in this type of situation, it raises
25 tensions, and I think what we've seen over the weeks of the

1 Ferguson, you know, incidences is that when there's, you know,
2 good communication and police and protestors are working
3 together, these situations can be managed, and I think that's
4 even what their evidence indicates.

5 So I don't think the public interest weighs one way
6 and the likelihood of success on the merits weighs another way
7 here. I think the public interest here favors enjoining this
8 law because I think it will actually reduce tensions. It will
9 send a very positive message to the protestors out there that
10 arbitrary laws will not be condoned.

11 THE COURT: Okay. I interrupted you where I think
12 you told me -- well, you had just said -- you were getting
13 into due process and whether this was a consideration. Was
14 there anything else you wanted to add about that since I
15 interrupted you?

16 MR. DAVIS-DENNY: Oh, Your Honor, I think this is a
17 point that I didn't make earlier, and there is case law, and
18 we've cited it in our brief. Simply to make the point that
19 the public safety does not justify laws that give citizens
20 undue notice of what's allowed and what isn't allowed or that
21 gives the police excessive discretion, and (a) that's
22 governing precedent, but I think it reflects a very sound
23 thought, which is that laws that are haphazardly applied, per
24 se, can't be effective. They can't achieve what they are
25 intended to achieve, particularly, when people don't know

1 what -- when they'll run afoul of the law and when they won't.

2 THE COURT: Anything further from either of the
3 Defendants?

4 MR. ISAACSON: No, not from us.

5 MR. SHUMAN: At the risk of being repetitive, we all
6 know there was no written order from the State to the County
7 to do this, but we heard from, well, each of the witnesses
8 that addressed it that the different partners of the Unified
9 Command would propose something; Captain Johnson okayed it; it
10 happened. If Captain Johnson did not okay it, it didn't
11 happen, and if that doesn't make it a State policy and not a
12 County policy, I just don't know what does.

13 I think Mr. Rothert described the effect of the *Vives*
14 case correctly, but you have to think that this -- in order to
15 think that that would operate against the County, you have to
16 think that it was simply not something that the County had
17 discretion. I think the *Vives* case uses the word "made a
18 conscious decision to follow this," and I don't see how they
19 could have made a conscious decision when it was Captain
20 Johnson that said, "Yes, let's go with it," and that they --
21 if Johnson had said, "Let's not go with it," when we don't,
22 that's not a conscious decision. You ought to be guided by
23 *Vives* and not attribute *Monell* liability to the County.

24 THE COURT: All right. Thank you. I'm going to take
25 this all under submission. I will rule on it as soon as I

1 can. And I would ask counsel to make sure that I do have a
2 set of each of the exhibits. Like I say, I've already got --
3 I've got Plaintiff's Exhibit 1 and Plaintiff's Exhibit 2
4 already as part of the pretrial filings, so I will also give
5 you back the ones I already have up here, so you can -- so I
6 can end up with just one copy, and so please leave those with
7 the clerk, and like I say, I'll take it under submission.

8 MR. ISAACSON: I did not move for D through G because
9 they're already in.

10 THE COURT: That's fine. Yeah, that's -- actually,
11 yeah, less paper is good. Okay. So court's in recess.

12 (Proceedings concluded at 5:09 p.m.)
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CERTIFICATE

I, Gayle D. Madden, Registered Diplomate Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 315 inclusive.

Dated at St. Louis, Missouri, this 1st day of December, 2014.

/s/ Gayle D. Madden

GAYLE D. MADDEN, CSR, RDR, CRR

Official Court Reporter